

CHAPTER 5

Department of Health

Department of Health's efforts in smoking control

**Audit Commission
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DEPARTMENT OF HEALTH'S EFFORTS IN SMOKING CONTROL

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DEPARTMENT OF HEALTH'S EFFORTS IN SMOKING CONTROL

Executive Summary

1. In Hong Kong, it is the Government's policy to discourage smoking, contain the proliferation of tobacco use and minimise the impact of passive smoking on the public. The Department of Health (DH) is the government department responsible for implementing the Government's smoking control efforts through a multi-pronged approach, comprising legislation, enforcement, publicity, education and smoking cessation services. There are two ordinances for governing smoking control, namely the Smoking (Public Health) Ordinance (SPHO — Cap. 371) and the Fixed Penalty (Smoking Offences) Ordinance (FPSOO — Cap. 600). The SPHO provides a legal framework for restricting the use, sale and promotion of tobacco products in Hong Kong:

- (a) ***Smoking ban at designated areas.*** Any persons who smokes or carries a lighted cigarette, cigar or pipe at a statutory no smoking area (NSA) designated by the SPHO commits an offence and is liable on summary conviction to a maximum fine of \$5,000. Statutory NSAs include indoor workplaces and public places (e.g. restaurants and bars), some outdoor public places (e.g. public transport facilities) and public transport carriers;
- (b) ***Regulation on sale of tobacco products.*** No person shall sell any cigarettes, cigars, pipe tobacco or cigarette tobacco unless the packet and the retail container bear a health warning in the form and manner prescribed by the SPHO; and
- (c) ***Regulation on tobacco advertisements.*** No person shall print, publish, display, broadcast, exhibit by films, or place on the Internet any tobacco advertisements as defined by the SPHO.

The FPSOO introduced a fixed penalty system for smoking offences to enhance the efficiency and effectiveness in enforcing the smoking ban. The FPSOO provides for a fixed penalty of \$1,500 payable for smoking offences at statutory NSAs under the SPHO.

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2. The DH has implemented various promotional activities relating to smoking control, such as distributing no-smoking signs and publicity materials, providing health talks and producing announcements in the public interest. It also provides funding to the Hong Kong Council on Smoking and Health (COSH) which conducts publicity campaigns to encourage smokers to quit smoking, and garners public support for establishing a smoke-free Hong Kong. Moreover, the DH operates an integrated Smoking Cessation Hotline (the Quitline) to provide professional counselling and information on smoking cessation. It also subvents six non-governmental organisations (NGOs) and a university to deliver smoking cessation services and smoking prevention programmes.

3. The DH's smoking control efforts are implemented through the Tobacco Control Office (TCO), which was set up under the DH in 2001. In 2016-17, the TCO's expenditure on smoking control amounted to \$101.3 million while the DH's subventions to COSH, the six NGOs and the university (see para. 2) amounted to \$83.2 million. The Audit Commission (Audit) has recently conducted a review of the DH's efforts in smoking control.

Enforcement work of the TCO

4. *Handling of smoking complaints.* The TCO makes use of a record system, which is a computerised spreadsheet, for recording details of complaint cases (para. 2.6). Audit found that:

- (a) *Need to develop a computer system to properly record and monitor the performance in complaints handling.* Details of complaint cases had not been completely recorded in the record system. Of the 18,354 complaint cases received by the TCO in 2017, the interim reply dates of 7,003 (38%) cases, the first inspection dates of 7,542 (41%) cases, the inspection results of 8,334 (45%) cases, and the final reply dates of 6,401 (35%) cases had not been recorded in the record system (para. 2.7); and
- (b) *Need to disclose the TCO's guidelines on the timeframes for handling complaints.* For the 10,812 complaints received in 2017 with first inspection dates recorded, the first inspections had been conducted on average eight calendar days after receiving the complaints. Although the TCO has set internal guidelines on the timeframes (e.g. for issuing interim replies and conducting first inspections) for handling complaint cases, it

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does not consider these guidelines to be performance pledges. It therefore has not disclosed any of these guidelines (paras. 2.11 and 2.12).

5. ***Enforcement of smoking offences.*** Audit found that:
- (a) ***Need to provide additional guidelines to determine the frequency of inspections on complaints and inspections at locations requiring enhanced inspections (LREIs).*** The number of inspections conducted by Tobacco Control Inspectors (TCIs) on complaints and at LREIs was left to the individual judgment of the TCIs and thus varied considerably. For example, in an audit sample of 493 complaints received by the TCO in August 2017, 1 inspection had been conducted for each of the 191 complaints while 5 inspections had been conducted for each of the 7 complaints. In August 2017, of the 353 LREIs inspected by TCIs, 1 inspection had been conducted at each of the 109 LREIs while 5 inspections had been conducted at each of the 26 LREIs (paras. 2.17, 2.18, 2.22 and 2.23);
 - (b) ***Need to conduct more inspections at venue types having higher incidences of smoking offences.*** Audit’s analysis of the 8,066 complaint inspections and LREI inspections conducted by the TCO at 2,387 venues in August to October 2017 revealed that for some types of venues (e.g. bus interchange and amusement game centre), the percentage of inspections with smoking offences detected were generally higher. The TCO needs to consider conducting more inspections at the types of venues where there are higher incidences of smoking offences (paras. 2.25 and 2.26); and
 - (c) ***Need to carry out more “overnight” inspections.*** TCIs carried out inspections at different time sessions, namely “morning and afternoon”, “afternoon and evening”, “evening” and “overnight” sessions. Of the 8,066 inspections conducted in August to October 2017, “overnight” inspections had the highest percentage of inspections with smoking offences detected but accounted for only 1.6% of all the inspections conducted (paras. 2.27 and 2.28).
6. ***Fixed penalty system.*** Under the FPSOO, when witnessing a smoking offence at a statutory NSA, a TCI can issue a fixed penalty notice (FPN) to the offender, demanding a fixed penalty of \$1,500. Furthermore, authorised officers of

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the Food and Environmental Hygiene Department (FEHD), the Housing Department (HD) and the Leisure and Cultural Services Department (LCSD) as well as police officers are also empowered to issue FPNs (paras. 2.35 and 2.36). Audit found that:

- (a) ***Need to properly handle omissions or errors in FPNs.*** For the FPNs issued in 2013 to 2017, 306 had been withdrawn due to various reasons. The reason of “omission or error in the FPN” accounted for 139 (45%) of the 306 withdrawals. The FPNs withdrawn due to this reason were issued by enforcement departments other than the TCO. Instead of withdrawing an FPN, the TCO would decide on a case-by-case basis to issue an amendment notice, which would rectify the omission or error, to the offender. The TCO needs to disseminate to other enforcement departments its practice of issuing amendment notices rectifying omissions or errors in FPNs issued to offenders (paras. 2.38 to 2.40); and

 - (b) ***Need to facilitate local and non-local offenders to settle FPNs.*** As at 31 December 2017, for the FPNs issued in 2013 to 2017, the unsettlement rate of FPNs of non-local offenders visiting Hong Kong (21.5%) was much higher than that of local offenders residing in Hong Kong (1.3%). Furthermore, the unsettlement rate of FPNs of local offenders rose from 0.4% in 2013 to 3.2% in 2017. The TCO needs to explore more ways to facilitate offenders, in particular non-local offenders, to settle FPNs (paras. 2.41 and 2.42).
7. ***Need to address tobacco advertisements at convenience stores and newspaper stands.*** Under the SPHO, tobacco advertisements are banned. In recent years, the TCO had received complaints about tobacco advertisements at convenience stores and newspaper stands (i.e. 8, 8 and 4 complaints in 2015, 2016 and 2017 respectively). Such advertisements were in the form of displaying packets of cigarettes in display units. Given that there are other similar tobacco advertisements at convenience stores and newspaper stands, the TCO needs to enhance the publicity to the trade on the legal requirement of banning tobacco advertisements, and take enforcement actions against tobacco advertisements where warranted (paras. 2.45, 2.46 and 2.48).

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8. ***Scope for improvement in the conduct of surprise checks.*** The inspection work of the TCO's enforcement teams is subject to supervisory checks by 4 Executive Officers of the TCO. Audit examined the 51 supervisory checks conducted in the 12-month period from November 2016 to October 2017 and found that: (a) in 20 (39%) checks, the Executive Officers were unable to find the enforcement teams at the inspection venues; (b) among the 21 enforcement teams, the number of supervisory checks conducted on the teams ranged from 0 to 9; and (c) no supervisory checks were conducted before 9:30 a.m. or after 7:30 p.m. while the enforcement teams were required to conduct inspections round the clock (paras. 2.51 and 2.53).

Facilitating the work of venue managers

9. ***Need to improve the display of no-smoking signs.*** The TCO has advised venue managers of statutory NSAs (e.g. management companies) to display sufficient no-smoking signs in prominent positions to remind people that smoking is prohibited at statutory NSAs. To this effect, the TCO has prepared no-smoking signs, which can be freely obtained from the TCO by venue managers. The Food and Health Bureau has also required bureaux and departments to post sufficient no-smoking signs, showing the fixed penalty level, at statutory NSAs under their control and management. Audit selected four types of statutory NSAs (see (a) to (d) below) to inspect the display of no-smoking signs (paras. 3.8 to 3.10). Audit's findings were as follows:

- (a) ***Enclosed public places.*** Enclosed public places include enclosed staircases and enclosed pedestrian pavements. Audit visited 4 enclosed staircases and 4 enclosed pavements in three districts in the territory and found that there were no display of no-smoking signs and evidence of smoking as cigarette butts were found on the stairs or ground (paras. 3.12 and 3.13);
- (b) ***Outdoor escalators.*** Audit visited 20 outdoor escalators (located in public housing estates of two districts and in Wan Chai) each for half an hour. Audit found that at only 5 (25%) of the 20 escalators, no-smoking signs were displayed. Furthermore, Audit spotted 6 persons smoking at 5 of the 15 escalators at which no-smoking signs were not displayed, but did not spot any persons smoking at the 5 escalators at which no-smoking signs were displayed (paras. 3.14 and 3.15);
- (c) ***Public pleasure grounds (PPGs).*** Audit visited 9 PPGs managed by the LCSD (located in three districts) each for one hour. Audit found that at all

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of the 9 PPGs, no-smoking signs/banners were displayed, the vast majority of which were the LCSD's own signs/banners. Unlike the TCO's signs/banners, the LCSD's signs/banners did not show information on the fixed penalty for violation and the complaint hotline of either the LCSD or the TCO. Furthermore, at 8 (89%) of the 9 PPGs, Audit spotted 33 persons smoking. At all of the 9 PPGs, cigarette butts were found (para. 3.16); and

- (d) ***Public transport facilities (PTFs).*** The TCO is responsible for displaying no-smoking signs and banners at PTFs. Audit visited 9 PTFs (located in three districts) each for one hour, and spotted 12 persons smoking at 6 (67%) of the 9 PTFs where no-smoking signs and banners were displayed (para. 3.17).

10. ***Need to step up enforcement efforts.*** As shown in paragraph 9, there were incidents where people were found smoking at statutory NSAs under the management of government departments (e.g. outdoor escalators in public housing estates managed by the HD and PPGs managed by the LCSD). Audit analysed the FPNs issued by the FEHD, the HD and the LCSD in 2013 to 2017 and found that the number of FPNs issued by the FEHD and the LCSD was much lower than that of the TCO and the HD. For example, in 2017, the FEHD issued 52 FPNs at statutory NSAs under its management, the LCSD issued 54 FPNs at statutory NSAs under its management, while the TCO issued 517 FPNs and 495 FPNs at statutory NSAs under the management of the FEHD and the LCSD respectively. In the same year, the HD issued 410 FPNs at statutory NSAs under its management (para. 3.22).

Smoking cessation services and other management matters

11. ***Provision of smoking cessation services through subvented organisations and a DH clinic.*** Audit found that:

- (a) ***Scope for improving the monitoring of subvented organisations' performance.*** The DH monitored the performance of the seven subvented organisations (see para. 2) mainly by reviewing the performance reports submitted regularly by them, and by holding meetings with them to discuss their performance. According to the TCO, it had conducted ad-hoc inspections at the organisations. For example, in 2015 to 2017, as part of the international training programmes on smoking control organised by the

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TCO annually, TCO staff (and training programme participants) paid visits to the smoking cessation clinics operated by two organisations. As the TCO's inspections are only conducted on an ad-hoc basis, the TCO needs to take measures to better plan its inspections at the seven subvented organisations taking into account the frequency of inspections and the need to conduct surprise inspections. The TCO also needs to conduct the inspections in a more comprehensive manner. For example, it needs to ascertain whether proper systems are in place for reporting performance and controlling the use of DH subventions (paras. 4.5 and 4.6); and

- (b) ***Need to review the way forward of a DH clinic.*** The DH provides smoking cessation services to members of the public through a primary care out-patient clinic. DH records indicated that, in 2009 to 2017, the number of referrals by the DH Quitline (see para. 2) to the DH clinic had decreased from 619 in 2009 by 606 (98%) to 13 in 2017, and the number of new cases had decreased from 354 in 2009 by 348 (98%) to 6 in 2017. Given the small number of referrals and new cases of the clinic in recent years and the fact that similar smoking cessation services are being provided by DH subvented organisations, the DH needs to conduct a review on the way forward of the clinic's smoking cessation services (paras. 4.8 and 4.10).
12. ***Scope for setting additional performance indicators.*** Audit noted that in the DH's Controlling Officer's Reports for 2013 to 2017, there was only one performance indicator (i.e. the number of publicity or educational activities delivered by COSH) that was relevant to the DH's smoking control efforts. The DH needs to set and publish additional performance indicators (paras. 4.14 and 4.15).

Operation of COSH

13. ***Governance of COSH.*** COSH is a statutory body established in 1987 pursuant to the Hong Kong Council on Smoking and Health Ordinance (Cap. 389). As at 31 December 2017, COSH consisted of 17 members, including the Chairman, the Vice-Chairman and 15 other members (including 2 government officials, i.e. the Deputy Director of the DH and the Assistant Director (Publicity and Promotions) of the Information Services Department (ISD)). Under COSH, five committees and a Secretariat have been set up to assist it in carrying out its functions (paras. 5.2 and 5.3). Audit found that:

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- (a) ***Need to enhance attendance rates at meetings.*** In 2013-14 to 2017-18 (up to January 2018), for meetings of the Council and the Executive Committee, the overall attendance rates were above 70% and 90% respectively. However, for some meetings of the other four committees, the overall attendance rates were below 70%. Furthermore, the attendance rates of some members (e.g. 5 members in 2016-17) were below 50% and, in particular, 1 member did not attend any meetings in 2016-17 (paras. 5.7 and 5.9);
- (b) ***Need to address issues relating to the attendance of government officials at meetings.*** The Deputy Director of the DH had participated in the meetings of the Council/Executive Committee in which the annual budget and the application for supplementary grant were discussed and approved for submission to the Government. In February 2018, the TCO informed Audit that the Deputy Director's presence in the meetings did not imply that COSH's programme and budget proposals would invariably be approved by the DH subsequently. As a good governance practice, COSH and the DH need to ensure that members of the Council/Executive Committee fully understand the roles and functions of the Deputy Director in the Council/Executive Committee. Furthermore, Audit noted that in 2013-14 to 2017-18 (up to January 2018), a Principal Information Officer of the ISD had represented the ISD's Assistant Director to attend all the meetings of the Council and the Education and Publicity Committee. COSH, however, had not laid down rules for alternate members to attend meetings (paras. 5.11 to 5.14); and
- (c) ***Need to disclose remunerations of senior staff.*** In March 2003, the Director of Administration issued a Circular Memorandum, promulgating a set of guidelines for the control and monitoring of remuneration practices in subvented bodies by the Government. COSH had published on its website a message that the remuneration packages of its staff at the top three tiers had been reviewed and recommended to remain unchanged. COSH, however, did not publish on its website information such as the number, rank and remuneration packages of its staff at the top three tiers (paras. 5.17 and 5.18).
14. ***Implementation of programmes by COSH.*** COSH implements three types of programmes, namely community education programmes, publicity programmes,

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and research and conference programmes (para. 5.23). Audit examined two major programmes and found that:

- (a) ***Interactive Education Theatre Programme.*** In every school year, COSH cooperates with a local professional troupe to produce a show. The troupe stages a show performance at each of the primary schools participating in the Programme to inform students of the harmful effects of smoking, and to equip them to promote a smoke-free lifestyle and encourage their family members to quit smoking. In the five school years 2012/13 to 2016/17, some 230 schools had participated in the Programme, accounting for about 46% of all primary schools. However, about 270 (54%) schools had not participated in the Programme (paras. 5.25 and 5.27); and
- (b) ***“Quit to Win” Smoke-free Community Campaign.*** COSH recruits district organisations as district partners and offers financial support to them for organising smoke-free promotion activities. However, Audit noted that no district organisations had been recruited for a number of districts in recent years to participate in the Campaign. For example, no district organisations had been recruited for the 5 Campaigns since 2012-13 for 3 districts (paras. 5.28 and 5.30).

Audit recommendations

15. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Director of Health should:**

Enforcement work of the TCO

- (a) **closely monitor the implementation of the Tobacco Control Office Information System to ensure that there is no undue delay in enhancing the monitoring of performance in complaints handling (para. 2.14(a));**
- (b) **take measures to ensure that data relating to complaints handling are entered into the Tobacco Control Office Information System in a timely and complete manner for proper monitoring of performance in complaints handling (para. 2.14(b));**

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- (c) **consider disclosing the TCO’s guidelines on the timeframes for handling complaint cases together with the extent that the timeframes have been achieved (para. 2.14(c));**
- (d) **provide additional inspection guidelines to facilitate TCIs to determine the frequency of complaint inspections and LREI inspections (para. 2.33(a));**
- (e) **consider conducting more inspections at the types of venues having higher incidences of smoking offences (para. 2.33(b));**
- (f) **consider conducting more “overnight” inspections (para. 2.33(c));**
- (g) **disseminate to other enforcement departments the TCO’s practice of issuing amendment notices rectifying omissions or errors in FPNs issued to offenders (para. 2.43(a));**
- (h) **explore more ways to facilitate offenders, in particular non-local offenders, to settle FPNs (para. 2.43(b));**
- (i) **enhance the publicity to the trade on the legal requirement of banning tobacco advertisements and the legal definition of such advertisements, and take enforcement actions against tobacco advertisements where warranted (para. 2.49);**
- (j) **take measures to deal with the situations where the enforcement teams could not be found at inspection venues during surprise checks (para. 2.54(a));**
- (k) **lay down guidelines to facilitate Executive Officers to conduct surprise checks (para. 2.54(b));**

Facilitating the work of venue managers

- (l) **identify enclosed public places and outdoor escalators at which there are no display of no-smoking signs, and encourage venue managers of these venues to display no-smoking signs (para. 3.19(a));**

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- (m) **advise venue managers to display no-smoking signs containing messages relating to the smoking ban (e.g. the fixed penalty for violation and the TCO's complaint hotline) (para. 3.19(b));**
- (n) **at statutory NSAs of which the venue managers are government departments, urge the managers to follow the requirements of the Food and Health Bureau (para. 3.19(c));**
- (o) **provide the FEHD, the HD and the LCSD with information on recurrent complaints about smoking at the statutory NSAs managed by them on a more frequent basis so as to facilitate them to initiate enforcement actions more effectively, and conduct more joint operations with these departments so as to provide more training to their authorised officers (para. 3.24);**

Smoking cessation services and other management matters

- (p) **take measures to better plan the TCO's inspections at the organisations subvented by the DH for providing smoking cessation services and conduct more comprehensive inspections (para. 4.11(a));**
- (q) **review the way forward of the smoking cessation services provided by the DH clinic to members of the public (para. 4.11(b));**
- (r) **consider setting and publishing additional performance indicators so as to enhance the transparency and accountability of the DH's efforts in smoking control (para. 4.16); and**

Operation of COSH

- (s) **consider requiring COSH to publish details concerning remunerations of the staff at the top three tiers of COSH (para. 5.20).**

16. **Audit has also *recommended* that the Director of Food and Environmental Hygiene and the Director of Leisure and Cultural Services should review the enforcement operations at the statutory NSAs under their**

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management and step up enforcement efforts at these NSAs where warranted (para. 3.25).

17. **Audit has also *recommended* that COSH should:**
- (a) **monitor the overall attendance rates of members at Council/committee meetings and take measures to improve the overall attendance rates where warranted (para. 5.19(a));**
 - (b) **take measures to improve the attendance rates of members with low attendance rates at Council/committee meetings (para. 5.19(b));**
 - (c) **in conjunction with the DH, take measures to ensure that members of the Council/Executive Committee fully understand the roles and functions of the DH's Deputy Director in the Council/Executive Committee (para. 5.19(c));**
 - (d) **in conjunction with the ISD, review and revise the arrangement whereby the ISD's Assistant Director is represented by a Principal Information Officer in all Council/committee meetings (para. 5.19(d)); and**
 - (e) **enhance the efforts to recruit schools that have not participated in the Interactive Education Theatre Programme to join the Programme, and to recruit district organisations from those districts where no organisations have been recruited in recent years to participate in the "Quit to Win" Smoke-free Community Campaign (para. 5.31).**

Response from the Government and COSH

18. The Director of Health, the Director of Food and Environmental Hygiene, the Director of Leisure and Cultural Services and COSH agree with the audit recommendations.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 According to the Department of Health (DH), the harm of smoking, including exposure to passive smoking, is well-established by scientific research and well-recognised by international communities. To address tobacco dependence as a public health epidemic, the World Health Organization (WHO) has developed a Framework Convention on Tobacco Control which has 168 signatories (Note 1). According to the Framework Convention, various measures are required to deal with the epidemic, including measures regulating and reducing tobacco demand (Note 2).

1.3 In Hong Kong, it is the Government's policy to discourage smoking, contain the proliferation of tobacco use and minimise the impact of passive smoking on the public. This policy, according to the Government, has paid full regard to the provisions of the Framework Convention on Tobacco Control (Note 3). The DH is the major government department responsible for implementing the Government's smoking control efforts through a multi-pronged approach, comprising legislation, enforcement (see paras. 1.4 to 1.6), publicity, education and smoking cessation

Note 1: *China is a signatory of and has ratified the Framework Convention on Tobacco Control.*

Note 2: *The Framework Convention on Tobacco Control is a treaty negotiated under the auspices of the WHO. According to the WHO, the convention represents a paradigm shift in developing a regulatory strategy to address addictive substances. It asserts the importance of demand reduction strategies. The core demand reduction provisions in the convention include protection from exposure to tobacco smoke; regulation of the contents of tobacco products; regulation of tobacco product disclosures; packaging and labelling of tobacco products; education, communication, training and public awareness; tobacco advertising, promotion and sponsorship; demand reduction measures concerning tobacco dependence and cessation; and price and tax measures to reduce demand for tobacco.*

Note 3: *The application of the Framework Convention on Tobacco Control has extended to Hong Kong since 2006.*

Introduction

services (see paras. 1.7 and 1.8 — Note 4). The DH's vision is to promote a smoke-free culture, so as to safeguard the health of the community.

Legislation and enforcement

1.4 There are two ordinances for governing smoking control, namely the Smoking (Public Health) Ordinance (SPHO — Cap. 371) and the Fixed Penalty (Smoking Offences) Ordinance (FPSOO — Cap. 600).

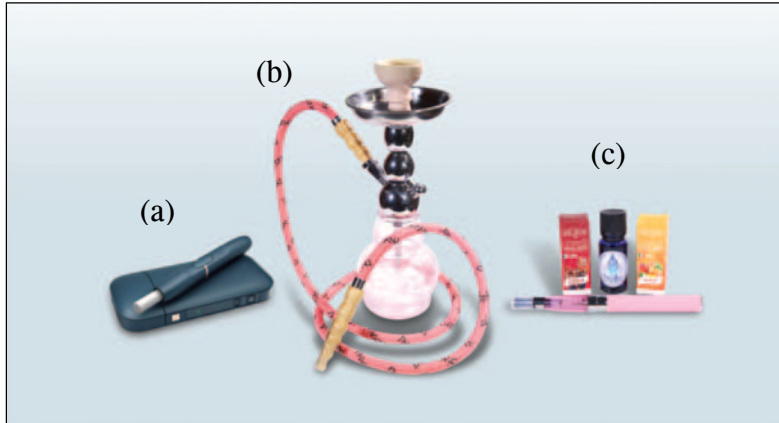
1.5 **SPHO.** The ordinance was first enacted in 1982 to provide a legal framework for restricting the use, sale and promotion of tobacco products in Hong Kong. Over the years, it has been progressively amended to tighten smoking control in various regards, taking into account prevailing community opinions and international developments. The smoking control regime, as provided by the SPHO, is broadly as follows:

- (a) ***Smoking ban at designated areas.*** Statutory no smoking areas (NSAs) are designated by the SPHO and one of its subsidiary regulations, the Smoking (Public Health) (Designation of No Smoking Area) Notice (Cap. 371D). At present, statutory NSAs include indoor workplaces and public places (e.g. restaurants and bars), some outdoor public places (e.g. public transport facilities) and public transport carriers. Appendix A shows a list of statutory NSAs. Any person who smokes or carries a lighted cigarette, cigar or pipe at a statutory NSA commits an offence and is liable on summary conviction to a maximum fine of \$5,000. According to the DH, waterpipe smoking and smoking of heat-not-burn cigarettes as well as electronic cigarettes in statutory NSAs will also be prosecuted (see Photograph 1);

Note 4: *According to the Framework Convention on Tobacco Control, price and tax are also effective and important means of reducing tobacco consumption. The Food and Health Bureau and the DH monitor changes in tobacco retail prices and the overall smoking situation in Hong Kong, and review tobacco duty rates regularly. In Hong Kong, tobacco duty rates (for cigarettes, cigars, etc.) were last increased by 12% in 2014. Furthermore, the Customs and Excise Department combats illicit tobacco activities.*

Photograph 1

Other forms of smoking



- Legend: (a) a heat-not-burn cigarette
(b) a waterpipe for smoking
(c) an electronic cigarette

Source: *Hong Kong Council on Smoking and Health records*

Remarks: *According to the DH, a heat-not-burn cigarette uses real tobacco refills called tobacco sticks which are heated. The smoker inhales the aerosol produced which contains nicotine. Regarding waterpipe smoking, tobacco is heated to give off smoke which passes through a water bowl and is inhaled by the smoker through the hose of a waterpipe. An electronic cigarette is an electronic device which resembles a cigarette or cigar and has a cartridge for storing a liquid which vaporises. The smoker inhales the vapour produced which may contain toxic substances.*

- (b) **Regulation on sale of tobacco products.** No person shall sell any cigarettes, cigars, pipe tobacco or cigarette tobacco unless the packet and the retail container bear a health warning in the form and manner prescribed by the SPHO; and
- (c) **Regulation on tobacco advertisements.** No person shall print, publish, display, broadcast, exhibit by films, or place on the Internet any tobacco advertisements as defined by the SPHO.

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1.6 ***FPSOO.*** The ordinance was enacted in 2008 to introduce a fixed penalty system for smoking offences (which came into effect in 2009) to enhance the efficiency and effectiveness in enforcing the smoking ban. The FPSOO provides for a fixed penalty of \$1,500 payable for smoking offences at statutory NSAs under the SPHO. Payment of the fixed penalty by an offender will have the effect of discharging his/her liability to conviction for the smoking offence.

Publicity and education and smoking cessation services

1.7 ***Publicity and education.*** The DH has implemented various promotional activities relating to smoking control. These include distributing no-smoking signs and publicity materials, providing health talks and producing announcements in the public interest. The DH also provides funding to the Hong Kong Council on Smoking and Health (COSH — see paras. 1.12 to 1.14) which conducts publicity campaigns to encourage smokers to quit smoking, and garners public support for establishing a smoke-free Hong Kong.

1.8 ***Smoking cessation and related services.*** To complement the various measures for smoking control (see paras. 1.4 to 1.7), the DH operates an integrated Smoking Cessation Hotline (the Quitline) to provide professional counselling and information on smoking cessation. It also runs a smoking cessation mobile application. Furthermore, six DH clinics provide smoking cessation services as part of their clinical services (Note 5). Moreover, the DH subvents organisations to deliver smoking cessation services and smoking prevention programmes. At present, the subvented organisations comprise six non-governmental organisations (NGOs) and a university (see Table 3 in para. 1.16). The NGOs and the university deliver smoking cessation services and smoking prevention programmes through different means and approaches (e.g. counselling, clinical consultation, mobile clinics, and outreach services to workplaces).

Note 5: *67 clinics of the Hospital Authority also provide smoking cessation services (as part of clinical services) to smokers under the Hospital Authority's Smoking Counselling and Cessation Programme. Their services, which are limited to smoking cessation, are not covered in this audit review. This audit review covers the smoking control efforts of the DH, which is the major government department responsible for implementing the Government's smoking control efforts through a multi-pronged approach (see para. 1.3).*

Tobacco Control Office

1.9 The DH's smoking control efforts are implemented through the Tobacco Control Office (TCO), which was set up under the DH in 2001. According to the DH, the TCO's functions are to:

- (a) act as a principal enforcement agency under the SPHO;
- (b) assist venue managers (Note 6) of statutory NSAs to ensure public compliance with the SPHO;
- (c) promote a smoke-free culture and enhance public compliance with the SPHO through publicity and health education;
- (d) coordinate smoking cessation services of the DH; and
- (e) assist the Food and Health Bureau (FHB — the policy bureau of the DH) in reviewing smoking control legislation.

1.10 The TCO comprises three units (i.e. the Enforcement Unit, the Smoking Cessation and Publicity Unit, and the Administration Unit). The Head, TCO (a Principal Medical and Health Officer) oversees the TCO. For 2017-18, the TCO has an establishment of 140 posts (comprising the Head, 106 posts for the Enforcement Unit, 11 posts for the Smoking Cessation and Publicity Unit, and 22 posts for the Administration Unit). Appendix B shows an organisation chart of the TCO as at 31 December 2017.

1.11 Table 1 shows the TCO's key activities on smoking control in 2013 to 2017.

Note 6: *According to the SPHO, the venue manager of a statutory NSA means:*

- (a) *any person who is responsible for the management or is in charge or control of the area, and includes an assistant manager and any person holding an appointment analogous to that of a manager or assistant manager; or*
- (b) *in the case where there is no such person, the owner of the area.*

Table 1

**TCO's key activities on smoking control
(2013 to 2017)**

Activity	2013	2014	2015	2016	2017
	(Number)				
Enforcement of SPHO					
(a) Complaints (on smoking at statutory NSAs) received (Note 1)	18,079	17,354	17,875	22,939	18,354
(b) Inspections conducted	27,461	29,032	29,324	30,395	33,159
(c) Fixed penalty notices issued	8,330	7,834	7,693	8,650	9,711
Publicity and health education					
(a) Educational materials distributed (Note 2)	424,000	552,000	254,000	246,000	224,000
(b) Seminars on SPHO conducted	12	9	12	9	11
Smoking cessation					
(a) Calls to the Quitline handled (Note 3)	13,079	13,203	9,301	7,782	7,355
(b) Seminars on smoking cessation conducted (Note 4)	43	41	51	27	27

Source: *DH records*

Note 1: *According to the DH, the large increase (27% from 18,079 in 2013 to 22,939 in 2016) in the number of complaints on smoking offences received might be related to the designation as statutory NSAs in 2016 of eight bus interchanges at tunnel portal areas (see Note 11 to para. 2.2(a)).*

Note 2: *According to the DH, the large decrease (47% from 424,000 in 2013 to 224,000 in 2017) in the number of educational materials distributed was mainly due to the fact that such educational materials had also been placed on the TCO's website and available for downloading by the public.*

Note 3: *According to the DH, the large decrease (44% from 13,079 in 2013 to 7,355 in 2017) in the number of calls to the Quitline handled was due to reduced smoking prevalence and increased proportion of smokers who were unwilling to give up smoking.*

Note 4: *According to the DH, the large decrease (37% from 43 in 2013 to 27 in 2017) in the number of seminars on smoking cessation conducted was due to a number of factors such as reduced number of requests and inability to arrange enough manpower on short notice.*

COSH

1.12 COSH is a statutory body established in 1987 pursuant to the Hong Kong Council on Smoking and Health Ordinance (Cap. 389). The Ordinance provides that COSH's functions are to protect and improve the health of the community by:

- (a) informing and educating the public on the harm of smoking and its adverse effects on health;
- (b) conducting and coordinating research into the cause, prevention and cure of tobacco dependence; and
- (c) advising the Government, community health organisations or any public bodies on matters relating to smoking and health.

1.13 As at 31 December 2017, COSH had 17 members, including the Chairman, the Vice-Chairman, a representative of the DH and a representative of the Information Services Department. To support COSH's operation, five committees and a Secretariat (see para. 5.3) have been established under COSH.

1.14 The DH provides annually a recurrent subvention and a supplementary grant to COSH to finance its operation (\$22.9 million in 2016-17). The DH has entered into a Funding and Service Agreement (FSA) with COSH. The FSA specifies the scope, basis (i.e. discretionary grant basis — Note 7) and use (i.e. for subvented activities only) of the DH's funding. The FSA also specifies the arrangements for the DH to monitor COSH's performance (e.g. through pre-set performance standards and regular reporting of performance statistics). More details are shown in PART 5 of this Audit Report.

Note 7: *A discretionary grant is designed to assist an organisation to meet the cost, either in whole or in part, of a programme of activities approved by the Government. The degree of financial assistance is entirely at the Government's discretion.*

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DH's expenditure on smoking control

1.15 Table 2 shows the TCO's expenditure on smoking control in 2012-13 to 2016-17.

Table 2

**TCO's expenditure on smoking control
(2012-13 to 2016-17)**

Expenditure	2012-13	2013-14	2014-15	2015-16	2016-17
	(\$ million)				
Enforcement of SPHO	39.6	42.7	49.9	51.5	54.5
Publicity and health education and smoking cessation	46.3	48.2	45.1	46.7	46.8
Total	85.9	90.9	95.0	98.2	101.3

Source: DH records

1.16 Table 3 shows the DH's subventions to COSH, the six NGOs and the university (see paras. 1.7 and 1.8).

Table 3

**DH's subventions to COSH, NGOs and university
(2012-13 to 2016-17)**

Subvented organisation	2012-13	2013-14	2014-15	2015-16	2016-17
	(\$ million)				
COSH	20.7	22.0	24.3	22.4	22.9
Tung Wah Group of Hospitals	26.5	34.7	37.0	39.1	41.5
Pok Oi Hospital	6.0	7.3	7.8	7.3	7.6
United Christian Nethersole Community Health Service	Nil (Note)	2.6	2.6	2.6	2.6
Lok Sin Tong Benevolent Society Kowloon	1.4	1.9	1.9	2.3	2.4
Life Education Activity Programme	Nil (Note)	1.3	2.3	2.3	2.3
Po Leung Kuk	1.7	2.2	2.0	2.2	2.0
University of Hong Kong	Nil (Note)	Nil (Note)	1.5	2.3	1.9
Total	56.3	72.0	79.4	80.5	83.2

Source: DH records

Note: Subventions have been provided to the United Christian Nethersole Community Health Service and the Life Education Activity Programme since 2013-14, and to the University of Hong Kong since 2014-15.

Smoking prevalence

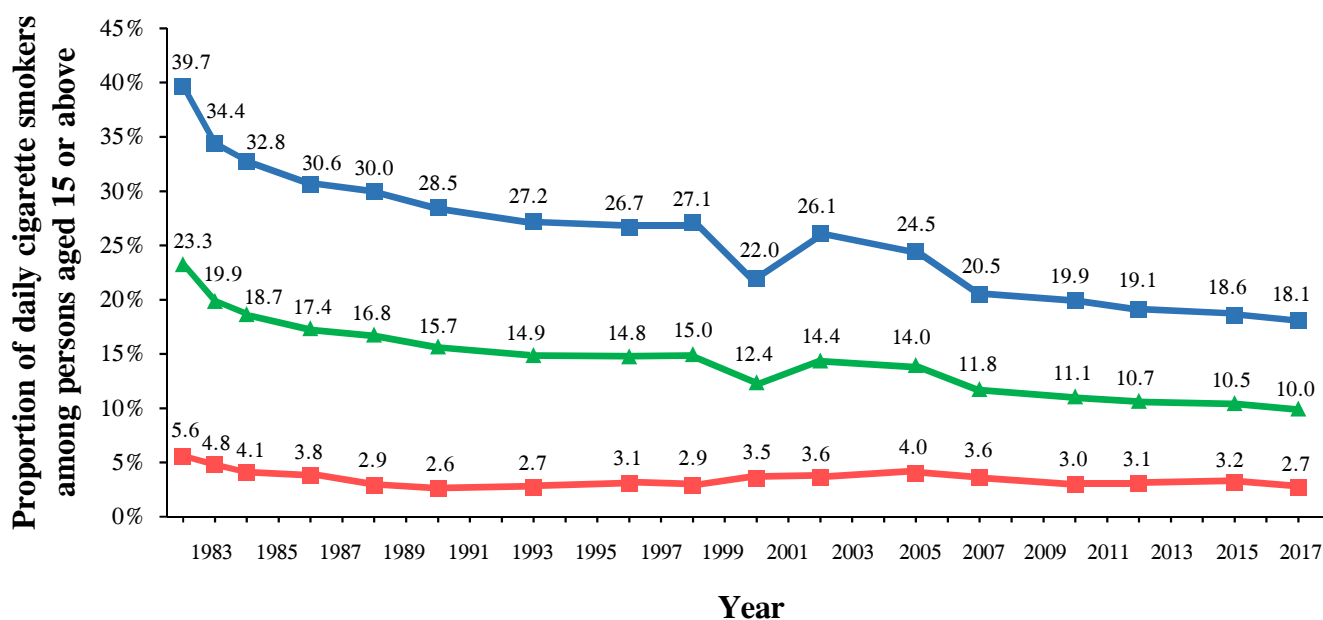
1.17 According to the DH, tobacco consumption is the single most important preventable risk factor responsible for main causes of death and chronic diseases, including cancers and cardiovascular diseases. Smoking prevalence is generally indicated by the proportion of daily cigarette smokers among the population of persons aged 15 or above. According to the results of various rounds of the Thematic

Introduction

Household Survey conducted by the Census and Statistics Department, the smoking prevalence had decreased from 23.3% in 1982 to 10% in 2017 (see Figure 1). In 2017, there were some 615,000 daily cigarette smokers. Nevertheless, according to the DH, efforts in smoking control will be sustained to bring down further the smoking prevalence rate. In particular, it faces challenges posed by electronic smoking devices which have become more popular. The 2017 Thematic Household Survey showed that the number of daily electronic cigarette users was 5,700 persons in 2017, while no significant number (estimated to be less than 1,000) was recorded in 2015.

Figure 1

Smoking prevalence (1982 to 2017)



Legend:
■ Daily male cigarette smokers
■ Daily female cigarette smokers
▲ Daily cigarette smokers

Source: *Census and Statistics Department Thematic Household Surveys*

Remarks: *The Census and Statistics Department did not conduct survey on smoking every year in its regular Thematic Household Survey. Figures for the proportion of daily cigarette smokers among persons aged 15 or above are therefore not shown for those years in which no survey on smoking had been conducted.*

Audit review

1.18 In October 2017, the Audit Commission (Audit) commenced a review of the DH's efforts in smoking control. The review focused on the following areas:

- (a) enforcement work of the TCO (PART 2);
- (b) facilitating the work of venue managers (PART 3);
- (c) smoking cessation services and other management matters (PART 4); and
- (d) operation of COSH (PART 5).

1.19 Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

General response from the Government and COSH

1.20 The Director of Health and COSH agree with the audit recommendations. The Director of Health thanked Audit for the invaluable recommendations made on the Department's measures in smoking control. COSH also thanked Audit for the efforts and coordination extended to COSH during the audit review.

Acknowledgement

1.21 Audit would like to acknowledge with gratitude the assistance and full cooperation of the staff of the DH and COSH during the course of the audit review.

PART 2: ENFORCEMENT WORK OF THE TOBACCO CONTROL OFFICE

2.1 This PART examines the TCO's enforcement work, focusing on the following areas:

- (a) handling of smoking complaints (paras. 2.5 to 2.16);
- (b) enforcement of smoking offences (paras. 2.17 to 2.34);
- (c) fixed penalty system (paras. 2.35 to 2.44);
- (d) enforcement on illegal tobacco advertisements (paras. 2.45 to 2.50); and
- (e) supervisory checks (paras. 2.51 to 2.55).

Tobacco Control Office's enforcement teams

2.2 The TCO's Tobacco Control Inspectors (TCIs) are empowered under the SPHO to enforce against smoking offences at venues designated as statutory NSAs in Hong Kong (Note 8). As at 31 December 2017, the TCO had the following staff:

Note 8: *In addition to enforcing against smoking offences at venues, TCIs are also empowered under the SPHO to enforce other laws under the SPHO, for example, enforcement against illegal tobacco advertisements and sales of tobacco products to minors. In 2017, there were 18,354 complaints of smoking at statutory NSAs (see Table 1 in para. 1.11), 80 complaints of illegal tobacco advertisements and 4 complaints of sales of tobacco products to minors.*

Enforcement work of the Tobacco Control Office

- (a) 89 full-time civil service TCIs comprising 6 Senior TCIs, 23 TCIs and 60 Assistant TCIs (Note 9). They formed 21 enforcement teams, which were led by the 6 Senior TCIs. Each of the teams comprised 1 TCI and 2 to 3 Assistant TCIs. Of the 21 teams, 20 were responsible for carrying out inspections concerning complaints about smoking at venues (Note 10) at the 18 districts in Hong Kong, and 1 was responsible for the same at eight bus interchanges (which are statutory NSAs — Note 11). In addition, the 21 teams also carried out inspections at locations requiring enhanced inspections (LREIs) (see para. 2.21);
- (b) 36 part-time non-civil service contract TCIs. They accompanied and assisted full-time TCIs in their inspections; and
- (c) 20 full-time non-civil service contract TCIs (who were retired police officers). They formed 4 special enforcement teams, which were established in December 2017 to conduct inspections focusing on LREIs particularly during night time and public holidays. Each of the teams comprised 1 Senior TCI and 4 TCIs.

Note 9: *As at 31 December 2017, the establishment and strength of the full-time civil service TCIs were 89 and 81 respectively. To address the shortfall of 8 (89 minus 81) TCIs, the TCO hired 6 full-time non-civil service contract TCIs thereby bringing the shortfall from 8 to 2.*

Note 10: *TCIs are also responsible for conducting other inspections such as those concerning illegal tobacco advertisements and sales of tobacco products to minors.*

Note 11: *The eight bus interchanges were located on both sides of the respective toll plazas of the Cross-Harbour Tunnel, the Eastern Harbour Crossing, the Lion Rock Tunnel, the Shing Mun Tunnels, the Tai Lam Tunnel, the Tate's Cairn Tunnel, the Tsing Sha Highway and the Western Harbour Crossing.*

Enforcement work of the Tobacco Control Office

2.3 For the 21 enforcement teams of full-time TCIs, they carry out inspections at different time sessions, i.e. “morning and afternoon” session, “afternoon and evening” session and “overnight” session. For the part-time TCIs, since February 2017, in addition to assisting the full-time TCIs in carrying out inspections, they have been conducting more “evening” inspections (Note 12). For the 4 special enforcement teams responsible for conducting inspections at LREIs, they mainly carry out “afternoon and evening” and “overnight” inspections.

2.4 According to the TCO, as the act of smoking lasts for a short period of time and there are a large number of venues in the territory, it is impossible for TCIs to conduct a complaint inspection immediately upon receiving a smoking complaint. Instead, TCO enforcement teams will group the venues having smoking complaints together with the LREIs to design routes for inspections. The teams will inspect all the venues and LREIs along the routes at scheduled time slots (e.g. a venue will be visited at 10:00 a.m. and the next venue at 10:30 a.m.).

Handling of smoking complaints

2.5 According to the TCO’s enforcement guides, the procedures in handling complaints about smoking at statutory NSAs (Note 13) are as follows:

- (a) **Complaints.** Complaints can be made through various channels, for example, telephone, letters or e-mails;

Note 12: *The durations of the time sessions are as follows:*

- (a) *“morning and afternoon” session: 6:00 a.m. to 6:00 p.m.;*
- (b) *“afternoon and evening” session: 12:00 noon to 11:00 p.m.;*
- (c) *“evening” session: 6:00 p.m. to 11:00 p.m.; and*
- (d) *“overnight” session: 8:00 p.m. to 6:00 a.m. of next day.*

Note 13: *The procedures apply also to the handling of other complaints (e.g. complaints about illegal tobacco advertisements and sales of tobacco products to minors).*

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- (b) ***Interim replies.*** Upon receipt of a complaint, the TCO will contact the complainant for further information and issue an interim reply;
- (c) ***Inspections.*** The TCO will conduct inspections at the venue concerned; and
- (d) ***Final replies.*** After conducting the first inspection and subsequent inspections (where necessary) at the venue, the TCO will issue a final reply to the complainant informing him/her of the inspection results.

2.6 The TCO prepares a manual investigation report for each complaint case, which records details of actions taken on the complaint (i.e. conversations made with the complainant, inspections conducted, and replies issued). The TCO also makes use of a record system known as the Master Case Log, which is a computerised spreadsheet, for recording details of complaint cases. It records information on complaint details, interim reply dates, inspection dates, inspection results and final reply dates.

Need to develop a computer system to properly record and monitor the performance in complaints handling

2.7 Audit examined the recording of information on smoking complaints received in 2017 into the Master Case Log. Audit found that of the total number of complaint cases of 18,354 in 2017, the following information had not been recorded in the Log:

- (a) the interim reply dates of 7,003 (38%) cases;
- (b) the first inspection dates of 7,542 (41%) cases;
- (c) the inspection results of 8,334 (45%) cases; and
- (d) the final reply dates of 6,401 (35%) cases.

2.8 In February 2018, the TCO informed Audit that the reasons for incomplete recording of information in the Master Case Log included:

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- (a) for some complaint cases, there were no contact information and hence there were no interim replies to the complainants; and
- (b) for some complaint cases received in November and December 2017, the follow-up actions had not yet been completed and therefore the information relating to the complaint cases had not been entered into the Master Case Log.

2.9 In February 2018, the TCO also informed Audit that:

- (a) the Master Case Log was not for monitoring the performance in complaints handling, but for facilitating retrieval of old records for analysis purpose;
- (b) to monitor the performance in complaints handling, 40 complaint cases were randomly selected for checking on a monthly basis. Furthermore, the performance in complaints handling was also monitored through the monthly reports issued by the Government's Integrated Call Centre (through which the TCO's complaint hotline was operated) in which any overdue cases were reported; and
- (c) a computer system called the "Tobacco Control Office Information System" was being developed and would be launched in the second quarter of 2018. The System would replace the Master Case Log and facilitate the input of enforcement data and help ensure the completeness of information relating to complaints handling. The TCO would also make use of the System to monitor the performance in complaints handling.

2.10 The information gap outlined above (see para. 2.7) is unsatisfactory. Audit considers that the TCO needs to closely monitor the implementation of the Tobacco Control Office Information System to ensure that there is no undue delay. The TCO also needs to take measures to ensure that data relating to complaints handling is entered into the System in a timely and complete manner for proper monitoring of performance in complaints handling.

Need to disclose the TCO’s guidelines on the timeframes for handling complaints

2.11 The TCO has set internal guidelines on the timeframes for handling complaint cases (Note 14). According to the TCO, the guidelines are to provide general guidance to TCIs in handling complaint cases. The TCO also informed Audit that the lead time of a first inspection is affected by a number of factors, such as the time needed for contacting the complainant for more detailed information, the complexity of the case, the remoteness of the venue concerned, and the manpower constraint.

2.12 Based on the recorded interim reply dates of 11,351 (i.e. 18,354 minus 7,003 — see para. 2.7(a)) complaint cases and the recorded first inspection dates of 10,812 (i.e. 18,354 minus 7,542 — see para. 2.7(b)) complaint cases, Audit conducted an analysis to ascertain the extent that the TCO had handled these complaint cases within the timeframes set under the internal guidelines (see Table 4).

Table 4

**Handling of recorded complaint cases
(2017)**

	No. of recorded cases handled within the timeframe set under the TCO’s internal guidelines	Average timeframe
Issuing interim reply	10,645 (94% of 11,351 cases with available interim reply dates)	2.7 working days
Conducting first inspection	10,658 (99% of 10,812 cases with available first inspection dates)	8 calendar days

Source: Audit analysis of TCO records

Note 14: *According to the TCO, the internal guidelines are not performance pledges and hence are not to be disclosed.*

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2.13 Except for the 7,003 cases missing the interim reply dates and the 7,542 cases missing the first inspection dates (see para. 2.12), as shown in Table 4, the majority of the remaining complaint cases had been handled within the timeframes set under the TCO's internal guidelines. To enhance transparency and accountability, Audit considers that the DH needs to consider disclosing the internal guidelines on the timeframes for handling complaint cases together with the extent that the timeframes have been achieved (e.g. on the DH's website and Controlling Officer's Report).

Audit recommendations

2.14 **Audit has *recommended* that the Director of Health should:**

- (a) **closely monitor the implementation of the Tobacco Control Office Information System to ensure that there is no undue delay in enhancing the monitoring of performance in complaints handling;**
- (b) **take measures to ensure that data relating to complaints handling are entered into the System in a timely and complete manner for proper monitoring of performance in complaints handling; and**
- (c) **consider disclosing the TCO's guidelines on the timeframes for handling complaint cases together with the extent that the timeframes have been achieved.**

Response from the Government

2.15 The Director of Health agrees with the audit recommendations in paragraph 2.14(a) and (b). She has said that:

- (a) measures have long been in place to assure the quality of complaints handling in the TCO. These measures include staff training and provision of enforcement internal guidelines as well as an effective monitoring and auditing system to keep track of the performance in complaints handling; and

- (b) to further enhance the efficiency in monitoring the performance in complaints handling, the Tobacco Control Office Information System is being developed and will be launched in the second quarter of 2018. It will facilitate the timely input of enforcement data and help ensure the completeness of information. The DH will make use of this newly developed information system to monitor the performance.

2.16 The Director of Health notes the audit recommendation in paragraph 2.14(c). She has said that the DH will examine whether the publication of the TCO's internal guidelines will jeopardise the law enforcement effectiveness.

Enforcement of smoking offences

Need to provide additional guidelines to determine the frequency of complaint inspections

2.17 Audit selected a sample of smoking complaints received in August 2017 and conducted an analysis of the inspections carried out by the TCO for these complaints. All these inspections had been conducted by the end of October 2017. Table 5 shows the results of Audit's analysis.

Table 5

**Inspections conducted for complaints received in August 2017
(August to October 2017)**

No. of inspections conducted for each complaint	No. of complaints received	No. of complaints with smoking offences detected in inspections
1	191 (38.7%)	32 (16.8%)
2	214 (43.4%)	36 (16.8%)
3	57 (11.6%)	22 (38.6%)
4	23 (4.7%)	11 (47.8%)
5	7 (1.4%)	1 (14.3%)
6	1 (0.2%)	0 (0.0%)
Overall	493 (100.0%)	102 (20.7%)

Source: Audit analysis of TCO records

Remarks: In August 2017, the TCO received a total of 1,455 complaints. Audit examined 493 (34%) of the 1,455 complaints.

2.18 As shown in Table 5, the number of inspections varied considerably among the complaints. For example, 1 inspection had been conducted for each of the 191 complaints while 5 inspections had been conducted for each of the 7 complaints.

2.19 The number of inspections was left to the individual judgment of the TCIs. The TCO’s inspection guidelines as laid down in the TCO’s Enforcement Protocol state that “if there is reasonable suspicion that a relevant offence has been or is being committed, the TCI should formulate an action plan”. In February 2018, the TCO informed Audit that there were several factors affecting the number of inspections required to be conducted at the venue of a complaint case. These factors included:

- (a) the need for conducting inspections to familiarise with a venue newly inspected;

Enforcement work of the Tobacco Control Office

- (b) whether there was evidence of smoking (e.g. cigarette butts and smell);
- (c) whether there was history of relatively serious smoking problems;
- (d) whether additional information had been provided by the complainant;
- (e) whether there were multiple time periods of offences reported;
- (f) the nature of the venue;
- (g) public concern;
- (h) characteristics of smoking offenders; and
- (i) any other reasons that the enforcement team considered that more frequent inspections for stronger deterrent effect was needed.

2.20 To ensure that TCI resources are properly deployed, Audit considers that the TCO needs to provide additional inspection guidelines in the TCO's Enforcement Protocol to facilitate TCIs to determine the frequency of complaint inspections in different case scenarios.

Need to provide additional guidelines to determine the frequency of LREI inspections

2.21 The TCO maintains a list of venues that have been subjects of frequent smoking complaints and therefore would require more inspections (i.e. LREIs). The TCO has laid down criteria (e.g. based on specified number of complaints) for including venues in the list of LREIs. The list of LREIs is reviewed and updated at the end of each month according to the laid-down criteria. According to the TCO, TCIs conduct at least one monthly inspection for each venue in the list.

2.22 Audit conducted an analysis of the LREI inspections conducted in the two months of August and September 2017. Table 6 shows the results of Audit's analysis.

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Table 6

Inspections conducted at LREIs (August and September 2017)

No. of inspections per LREI in the month	Inspections in August 2017		Inspections in September 2017	
	No. of LREIs inspected	No. of LREIs with smoking offences detected	No. of LREIs inspected	No. of LREIs with smoking offences detected
1	109 (30.9%)	40 (36.7%)	106 (30.0%)	32 (30.2%)
2	92 (26.1%)	52 (56.5%)	106 (30.0%)	49 (46.2%)
3	64 (18.1%)	44 (68.8%)	65 (18.4%)	37 (56.9%)
4	42 (11.9%)	32 (76.2%)	40 (11.3%)	21 (52.5%)
5	26 (7.4%)	17 (65.4%)	20 (5.7%)	14 (70.0%)
6	9 (2.5%)	6 (66.7%)	8 (2.3%)	7 (87.5%)
7	9 (2.5%)	8 (88.9%)	4 (1.1%)	3 (75.0%)
8	1 (0.3%)	1 (100.0%)	2 (0.6%)	2 (100.0%)
9	1 (0.3%)	1 (100.0%)	N.A.	N.A.
20	N.A.	N.A.	1 (0.3%)	1 (100.0%)
21	N.A.	N.A.	1 (0.3%)	1 (100.0%)
Overall	353 (100.0%)	201 (56.9%)	353 (100.0%)	167 (47.3%)

Source: Audit analysis of TCO records

Remarks: There were 353 LREIs in August and September 2017.

2.23 The number of inspections was left to the individual judgment of the TCIs (see para. 2.19) and, as shown in Table 6, varied considerably. For example, in August 2017, 1 inspection had been conducted at each of the 109 LREIs while 5 inspections had been conducted at each of the 26 LREIs.

2.24 As in the case of complaint inspections (see paras. 2.17 to 2.20), the TCO needs to provide additional inspection guidelines to facilitate TCIs to determine the frequency of LREI inspections.

Need to conduct more inspections at venue types having higher incidences of smoking offences

2.25 Audit conducted an analysis of the 8,066 complaint inspections and LREI inspections conducted by the TCO at 2,387 venues in August to October 2017. Table 7 shows the results of Audit's analysis.

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Table 7

**Analysis of inspections conducted at venues
(August to October 2017)**

Venue type	No. of venues (a)	No. of inspections (b)	No. of inspections with smoking offences detected (c)	Percentage of inspections with smoking offences detected (d) = (c) ÷ (b) × 100%
(a) Bus interchange	8	264	103	39%
(b) Amusement game centre	90	528	192	36%
(c) Billiard establishment	30	129	37	29%
(d) Mahjong-tin kau premises	57	315	86	27%
(e) Public transport facility/carrier	208	762	173	23%
(f) Shopping mall/shop	324	1,353	302	22%
(g) Market/cooked food centre	155	737	164	22%
(h) Public pleasure ground	160	478	89	19%
(i) Commercial/ industrial building	465	1,543	265	17%
(j) Bar/club	206	413	67	16%
(k) Food premises	402	871	105	12%
(l) Footbridge/subway/ walkway	59	167	15	9%
(m) Residential building	138	317	17	5%
(n) Others (Note)	85	189	38	20%
Overall	2,387	8,066	1,653	20%

Source: Audit analysis of TCO records

Note: Other types of venues included airport facility, bath establishment, beach, columbarium, construction site, government/NGO office, hospital, karaoke, public toilet and university. For these other types, the number of inspections per type was relatively small. For example, during August to October 2017, 2 inspections had been conducted for each of the types of columbarium and construction site.

2.26 As shown in Table 7, for some types of venues (e.g. venue types (a) to (g)), the percentage of inspections with smoking offences detected were generally higher. To enhance the enforcement against smoking offences, in addition to conducting complaint inspections and LREI inspections, the TCO needs to consider conducting more inspections at the types of venues where there are higher incidences of smoking offences.

Need to carry out more “overnight” inspections

2.27 As mentioned in paragraph 2.3, TCIs carried out inspections at different time sessions. For the 8,066 inspections conducted in August to October 2017 (see para. 2.25), Audit conducted an analysis of the inspections according to the inspection time sessions (see para. 2.3). Table 8 shows the results of Audit’s analysis.

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Table 8

**Inspections conducted at different time sessions
(August to October 2017)**

Time session	No. of time sessions (a) (% of all sessions)	No. of inspections conducted in the time sessions (b) (% of all inspections)	No. of inspections with smoking offences detected (c)	Percentage of inspections with smoking offences detected (d) = (c) ÷ (b) × 100%
“Morning and afternoon” (6:00 a.m. to 6:00 p.m.)	358 (73.5%)	5,737 (71.1%)	1,152	20%
“Afternoon and evening” (12:00 noon to 11:00 p.m.)	109 (22.4%)	1,837 (22.8%)	431	23%
“Evening” (6:00 p.m. to 11:00 p.m.)	13 (2.7%)	362 (4.5%)	31	9%
“Overnight” (8:00 p.m. to 6:00 a.m. of next day)	7 (1.4%)	130 (1.6%)	39	30%
Overall	487 (100%) (Note)	8,066 (100%) (Note)	1,653 (Note)	20%

Source: Audit analysis of TCO records

Note: In August to October 2017, the TCO carried out 8,066 inspections in 487 time sessions. Offences were detected in 1,653 inspections.

2.28 As shown in Table 8, “overnight” inspections had the highest percentage of inspections with smoking offences detected. However, they accounted for only 1.6% of all the inspections conducted in August to October 2017. To enhance the effectiveness of enforcement against smoking offences, the TCO needs to consider conducting more “overnight” inspections.

Need to have a computer system to record inspection results

2.29 It is the TCO’s practice that after the completion of inspections (complaint inspections and LREI inspections), TCIs will prepare manual inspection reports to record details of inspections conducted (e.g. the venues inspected, the venue locations, the time of inspections, and the number of smoking offences detected). The TCO did not have a computer system to record these details. The establishment of a computer system could more readily generate data on inspections conducted for management information and review purposes, and would facilitate the TCO to perform more analyses and identify higher-risk venues for inspections.

2.30 In February 2018, the TCO informed Audit that the Tobacco Control Office Information System (see para. 2.9(c)) was being developed and would facilitate the input of enforcement data and help ensure the completeness of enforcement information. Audit considers that the TCO needs to take measures to ensure that enforcement data are entered into the System in a timely and complete manner so as to efficiently generate information for the planning and reviewing of enforcement work.

Need to provide additional guidelines on conducting inspections in plain clothes

2.31 According to the TCO’s enforcement guidelines, TCIs have to wear TCO vests or jackets in conducting inspections. Nevertheless, the guidelines provide that when a venue is subject to repeated complaints and no offence is found in conducting inspections, the enforcement team should examine the case thoroughly to identify whether a spotter is in place. The enforcement team may consider wearing plain clothes when entering the venue for inspection, and putting on TCO vests or jackets when taking prosecution actions against an offender.

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2.32 Audit noted that, according to the manual inspection reports (see para. 2.29), it was not uncommon that enforcement teams found cigarette butts, ashes and smell at the venues inspected, but no offender was found. To enhance the effectiveness of inspections, Audit considers that the TCO needs to provide additional guidelines to enforcement teams on conducting inspections in plain clothes (e.g. guidelines on applicable circumstances and procedures to be followed).

Audit recommendations

2.33 **Audit has recommended that the Director of Health should:**

- (a) **provide additional inspection guidelines to facilitate TCIs to determine the frequency of complaint inspections and LREI inspections;**
- (b) **consider conducting more inspections at the types of venues having higher incidences of smoking offences;**
- (c) **consider conducting more “overnight” inspections;**
- (d) **take measures to ensure that enforcement data are entered into the Tobacco Control Office Information System in a timely and complete manner; and**
- (e) **provide additional guidelines to TCO enforcement teams on conducting inspections in plain clothes.**

Response from the Government

2.34 The Director of Health agrees with the audit recommendations. She has said that:

- (a) guidelines have been laid down for TCIs on arranging inspections in response to complaints and LREIs. Besides, this is the existing strategy of the TCO to conduct more inspections at venues where there are higher incidences of smoking offences;

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- (b) starting from 2017, the TCO has adopted measures to mobilise manpower resources, including setting up special enforcement teams (see para. 2.2(c)) to conduct more inspections at venues where there are higher incidences of smoking offences especially during night time and public holidays;
- (c) the TCO understands the special role of plain clothes in certain scenarios and has all along been deploying plain clothes TCIs for reconnaissance and to serve as witnesses for prosecution during appropriate enforcement operations; and
- (d) looking forward, the DH will enrich the guidelines to facilitate TCIs to determine the frequency of inspections and will closely monitor the patterns of complaints received and smoking offences found at different time sessions to guide the effective deployment of the enforcement manpower in future. The DH will also continue to enhance the role of plain clothes officers and review the protocol in this regard.

Fixed penalty system

2.35 Under the FPSOO, when witnessing a person smoking or carrying a lighted cigarette, cigar or pipe at a statutory NSA, a TCI can require the offender to provide his/her name, address, telephone number and proof of identity. The TCI will then issue a fixed penalty notice (FPN) to the offender, demanding a fixed penalty of \$1,500. According to the FPSOO:

- (a) within 21 days of the FPN date, the offender is required to settle the fixed penalty. If the offender does not settle, the TCO will issue a demand notice to him/her;
- (b) within 10 days of the demand notice date, the offender is required to settle the demand notice or inform the TCO that he/she wants to dispute;
- (c) if the offender disputes the offence, the TCO will issue a summons demanding the offender to attend a court hearing. If the offender neither settles the demand notice nor disputes, the TCO will apply to a magistrates' court to issue a court order, demanding the offender to pay within 14 days the fixed penalty of \$1,500, an additional penalty of \$1,500 and a court cost of \$300 (i.e. a total of \$3,300); and

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- (d) if the offender does not settle the court order so issued, the court will issue a warrant of non-payment of fine. The offender may be arrested by police officers.

2.36 Under the FPSOO, in addition to TCIs, authorised officers of the Food and Environmental Hygiene Department (FEHD), the Housing Department (HD) and the Leisure and Cultural Services Department (LCSD) are empowered to issue FPNs at statutory NSAs under the management of these government departments (Note 15). These statutory NSAs include, for example, the cooked food centres and markets of the FEHD, the indoor public places and outdoor escalators located in public housing estates of the HD, and the public pleasure grounds (PPGs) of the LCSD. Police officers are also authorised to issue FPNs. They may issue FPNs when they spot people smoking at statutory NSAs in the course of carrying out their duties (e.g. patrol duties). Police officers also play a supporting role in enforcing the smoking ban. For example, they would offer assistance in cases where people found smoking at statutory NSAs refuse to provide their proof of identity to authorised officers of the TCO, the FEHD, the HD and the LCSD.

2.37 The TCO has set up a Fixed Penalty Information System for processing FPNs issued. This system is also used by the other four enforcement departments (i.e. the FEHD, HD, LCSD and Police). Table 9 shows the number of FPNs issued by the enforcement departments in 2013 to 2017.

Note 15: *The FPSOO empowers, besides TCIs of the DH, officers of the FEHD (e.g. Health Inspectors), officers of the HD (e.g. Housing Managers and Housing Officers), officers of the LCSD (e.g. Leisure Services Managers and Managers, Cultural Services), and police officers to issue FPNs under the FPSOO.*

Enforcement work of the Tobacco Control Office

Table 9

**FPNs issued by enforcement departments
(2013 to 2017)**

Enforcement department	No. of FPNs issued					Total
	2013	2014	2015	2016	2017	
DH (TCO)	8,330	7,834	7,693	8,650	9,711	42,218 (89.8%)
Police	743	556	515	483	325	2,622 (5.6%)
HD	226	310	318	445	410	1,709 (3.6%)
LCSD	34	57	56	60	54	261 (0.6%)
FEHD	36	31	28	33	52	180 (0.4%)
Total	9,369	8,788	8,610	9,671	10,552	46,990 (100.0%)

Source: TCO records

Need to properly handle omissions or errors in FPNs

2.38 FPNs may be withdrawn by the enforcement departments due to various reasons, such as omissions or errors in FPNs, offenders deceased, and infirmities of offenders (Note 16). Table 10 shows an analysis of FPNs withdrawn in 2013 to 2017.

Note 16: *Medical proof is required for withdrawing on the grounds of infirmity.*

Enforcement work of the Tobacco Control Office

Table 10

Withdrawal of FPNs by enforcement departments (2013 to 2017)

Reason of withdrawal	No. of FPNs withdrawn					Total
	2013	2014	2015	2016	2017	
Omission or error in the FPN	35	19	29	30	26	139 (45%)
Offender deceased/infirmity/ medical reason	12	18	20	25	23	98 (32%)
Insufficient evidence (Note)/ non-statutory NSA	6	23	8	17	1	55 (18%)
Other reasons (e.g. demand notice undelivered)	4	4	2	3	1	14 (5%)
Total	57	64	59	75	51	306 (100%)

Source: Audit analysis of TCO records

Note: Insufficient evidence included, for example, the location of offence in the FPN was unclear.

2.39 As shown in Table 10, “omission or error in the FPN” accounted for most of the FPNs withdrawn in 2013 to 2017. Audit noted that all these FPNs were issued by enforcement departments other than the TCO. The omissions or errors were mainly those such as missing offence location and missing description of whether the offender was smoking a cigarette, cigar or pipe (which were particulars required to be recorded in an FPN). Audit further noted that, when an omission or error was found in an FPN, instead of withdrawing the FPN, the TCO would decide on a case-by-case basis to issue an amendment notice rectifying the omission or error to the offender.

2.40 Audit considers that the TCO needs to disseminate to other enforcement departments its practice of issuing amendment notices rectifying omissions or errors in FPNs issued to offenders.

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Need to facilitate local and non-local offenders to settle FPNs

2.41 Table 11 shows an analysis of FPNs issued in 2013 to 2017 but remained unsettled as at 31 December 2017.

Table 11

**Unsettlement of FPNs issued in 2013 to 2017
(as at 31 December 2017)**

		Year of issuing FPNs					Overall
		2013	2014	2015	2016	2017	
Local offenders residing in Hong Kong	No. of FPNs issued (a)	9,029	8,452	8,210	9,193	9,933	44,817
	No. of unsettled FPNs (Note) (b)	39	52	58	105	322	576
	Unsettlement rate (c)=(b)÷(a)×100%	0.4%	0.6%	0.7%	1.1%	3.2%	1.3%
Non-local offenders visiting Hong Kong	No. of FPNs issued (d)	340	336	400	478	619	2,173
	No. of unsettled FPNs (Note) (e)	72	76	81	104	135	468
	Unsettlement rate (f)=(e)÷(d)×100%	21.2%	22.6%	20.3%	21.8%	21.8%	21.5%

Source: Audit analysis of TCO records

Note: Court orders had been issued for these unsettled FPNs (see para. 2.35(c)).

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2.42 As shown in Table 11, for the FPNs issued in 2013 to 2017, the unsettlement rate of FPNs of non-local offenders visiting Hong Kong (21.5%) was much higher than that of local offenders residing in Hong Kong (1.3%). Furthermore, the unsettlement rate of FPNs of local offenders rose from 0.4% in 2013 to 3.2% in 2017. Audit noted that at present, FPNs may be settled through automated teller machines, Payment by Phone Service, Internet banking, phone banking, post (payments by cheques, bank drafts or cashier orders) or at Post Office counters. Audit considers that the TCO needs to explore more ways to facilitate offenders, in particular non-local offenders, to settle FPNs. Such ways may include, for example, reminding TCIs to explain to offenders the methods of settling FPNs, and considering the introduction of other methods for offenders to settle FPNs (e.g. in consultation with the Financial Services and the Treasury Bureau, exploring the possibility of introducing other methods for settling FPNs, such as through payments at convenience stores — Note 17).

Audit recommendations

2.43 **Audit has recommended that the Director of Health should:**

- (a) **disseminate to other enforcement departments the TCO's practice of issuing amendment notices rectifying omissions or errors in FPNs issued to offenders; and**
- (b) **explore more ways to facilitate offenders, in particular non-local offenders, to settle FPNs.**

Response from the Government

2.44 The Director of Health agrees with the audit recommendations. She has said that:

- (a) the TCO has been sharing the guidelines and experiences on handling smoking offences with other enforcement departments and will disseminate

Note 17: *This could facilitate not just the settlement of FPNs for smoking offences, but also for other offences (e.g. traffic and littering offences).*

to these departments the practice of handling omissions or errors in FPNs issued to offenders;

- (b) it is an established practice to explain the payment methods to non-local offenders at the scene. The various payment methods are also printed on FPNs; and
- (c) looking forward, the TCO will continue to remind non-local offenders the methods to settle FPNs at the scene and to explore with the relevant stakeholders on the feasibility of additional payment methods.

Enforcement on illegal tobacco advertisements

2.45 Under the SPHO, tobacco advertisements are banned. An advertisement is a tobacco advertisement if it contains implied inducement, suggestion or request to purchase or smoke cigarettes or other tobacco products. Any person who violates the ban on tobacco advertisements is liable on summary conviction to a maximum penalty of \$50,000 and, in the case of a continuing offence, to a further penalty of \$1,500 for each day the offence continues. Upon receiving a complaint about tobacco advertisement, the TCO will conduct investigations and implement enforcement actions if there is sufficient evidence.

Need to address tobacco advertisements at convenience stores and newspaper stands

2.46 In recent years, the TCO had received complaints about tobacco advertisements at convenience stores and newspaper stands (i.e. 8, 8 and 4 complaints in 2015, 2016 and 2017 respectively). Such advertisements were in the form of displaying packets of cigarettes in display units (see Photograph 2 for an example).

Photograph 2

**Displaying packets of cigarettes
in a light box at a convenience store**



Source: TCO records

2.47 In September 2017, after investigation and collection of evidence from a number of convenience stores and newspaper stands, the TCO initiated enforcement actions on the aforesaid form of tobacco advertisements (see para. 2.46). In February 2018, the TCO informed Audit that the enforcement actions were still on-going.

2.48 Given that there are other similar tobacco advertisements at convenience stores and newspaper stands, Audit considers that the TCO needs to:

- (a) enhance the publicity to the trade on the legal requirement of banning tobacco advertisements and the legal definition of such advertisements (see para. 2.45); and
- (b) take enforcement actions against tobacco advertisements where warranted.

Audit recommendations

- 2.49 **Audit has *recommended* that the Director of Health should:**
- (a) **enhance the publicity to the trade on the legal requirement of banning tobacco advertisements and the legal definition of such advertisements; and**
 - (b) **take enforcement actions against tobacco advertisements where warranted.**

Response from the Government

2.50 The Director of Health agrees with the audit recommendations.

Supervisory checks

2.51 The inspection work of the TCO's enforcement teams is subject to supervisory checks by 4 Executive Officers (EOs) of the TCO. According to the TCO, the main purpose of such checks is to discover any inconsistencies and irregularities of the enforcement teams (e.g. absenteeism).

2.52 According to the TCO's Standing Instructions for Tobacco Control Inspectors on Administrative Matters, each of the 4 EOs should conduct at least 1 surprise check (covering one or more inspection points, i.e. venues) per month. During surprise checks, the EOs make reference to the pre-designed inspection routes and visit inspection points at scheduled time slots (see para. 2.4). After the conduct of surprise checks, the EOs will record the check results in the Surprise Check Record Sheets.

Scope for improvement in the conduct of surprise checks

2.53 Audit examined the Surprise Check Record Sheets for the 12-month period from November 2016 to October 2017 and found that:

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- (a) in the period, 51 surprise checks had been conducted. Of these 51 checks, in 20 (39%) checks, the EOs had indicated that they were unable to find the enforcement teams at the inspection points. Of these 20 checks:
 - (i) in 16 (80%) checks, the enforcement teams could not be found because they had not adhered to the scheduled time slots in conducting their inspections (e.g. they had completed their inspections ahead of the scheduled time slots); and
 - (ii) in 4 (20%) checks, owing to the size of the venues, the EOs could not find the enforcement teams (see Case 1 for an example);

Case 1

Enforcement team not found in a surprise check (November 2016)

1. On 9 November 2016, a EO conducted a surprise check at an inspection point which was a shopping mall.
2. The EO arrived at the shopping mall at 2:00 p.m. (10 minutes before the scheduled inspection time of 2:10 p.m.). The EO waited at the mall for 47 minutes but did not find the enforcement team. At 2:47 p.m., the EO left.
3. According to the enforcement team's records, inspection of the shopping mall was conducted during 2:30 p.m. to 2:50 p.m. The records thus showed that both the EO and the enforcement team were in the shopping mall during 2:30 p.m. to 2:47 p.m.
4. The EO stated in the Surprise Check Record Sheet that the shopping mall was too big for him to find the enforcement team.

Source: TCO records

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- (b) 1 (4.8%) of the 21 full-time enforcement teams had not been subjected to surprise checks, while the number of surprise checks conducted on the teams had ranged from 0 to 9 (see Table 12). Upon enquiry in February 2018, the TCO informed Audit that the selection of target teams and the determination of frequency of checks were at the EOs' discretion; and

Table 12

**Surprise checks conducted on 21 enforcement teams
(November 2016 to October 2017)**

No. of surprise checks per team	No. of enforcement teams
0	1
1 to 3	16
4 to 6	3
9	1
Total	21

Source: Audit analysis of TCO records

Remarks: (a) As the part-time TCIs accompanied the full-time enforcement teams in carrying out inspections (see para. 2.2(b)), in conducting surprise checks on the full-time teams, the part-time TCIs had also been covered.

(b) As the special enforcement teams were established in December 2017 (see para. 2.2(c)), no surprise checks had been conducted on these teams in November 2016 to October 2017.

- (c) the Surprise Check Record Sheets also indicated that no surprise checks were conducted before 9:30 a.m. or after 7:30 p.m.. However, the enforcement teams were required to conduct inspections round the clock (see para. 2.3). Accordingly, some inspections had not been subjected to surprise checks.

Audit recommendations

- 2.54 **Audit has *recommended* that the Director of Health should:**
- (a) **take measures to deal with the situations where the enforcement teams could not be found at inspection points (e.g. the EOs could immediately call the teams to locate and follow up with them); and**
 - (b) **lay down guidelines to facilitate EOs to conduct surprise checks, including the need for conducting checks at different inspection time sessions of the TCO's enforcement teams.**

Response from the Government

2.55 The Director of Health agrees with the audit recommendations. She has said that:

- (a) the supervisory check system is a component of quality assurance to monitor onsite enforcement performance and written guidelines are available to guide the checking process; and
- (b) looking forward, the DH will enrich the guidelines and conduct checks at different inspection time sessions.

PART 3: FACILITATING THE WORK OF VENUE MANAGERS

3.1 This PART examines how the TCO could better facilitate the work of venue managers, focusing on the following areas:

- (a) providing support to venue managers (paras. 3.2 to 3.7);
- (b) display of no-smoking signs (paras. 3.8 to 3.20); and
- (c) enforcement work of other government departments (paras. 3.21 to 3.28).

Providing support to venue managers

3.2 The venue manager (see Note 6 to para. 1.9(b)) of a statutory NSA is empowered by the SPHO to take the following steps if he/she finds anyone smoking at the premises:

- (a) requiring the smoker to extinguish the lighted cigarette, cigar or pipe;
- (b) if the smoker is not cooperative, requiring the smoker to provide his name, address and proof of identity, and to leave the premises; and
- (c) if necessary, calling for police assistance.

Furthermore, according to the FPSOO, authorised officers of the FEHD, the HD and the LCSD may also issue FPNs to people found smoking at statutory NSAs under their management.

3.3 Since some ten years ago, the TCO has issued guides for implementing smoke-free measures for the following four types of statutory NSAs:

- (a) amusement game centres;

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- (b) restaurants and premises of the hospitality industry;
- (c) workplaces; and
- (d) schools.

The implementation guides for the first three types of statutory NSAs advise venue managers about the benefits of smoke-free premises (e.g. broadening the customer base), the smoke-free measures (e.g. displaying no-smoking signs) and the support and assistance (e.g. talks on smoking control legislation) available from the TCO. The last implementation guide advises schools about the comprehensive smoking control measures applicable to schools (e.g. educating students about the harmfulness of smoking). These implementation guides can be obtained free of charge from the TCO or downloaded from the TCO's website.

Need to update implementation guides for venue managers

3.4 Audit reviewed the four implementation guides and noted that some useful information has not been updated into the guides:

- (a) ***Smoking of electronic cigarettes and heat-not-burn cigarettes and waterpipe smoking.*** According to the DH, these types of smoking have become more popular in Hong Kong. The potential harmful effects of these products to human health should be included in the guides;
- (b) ***Third-hand smoke.*** Third-hand smoke refers to the chemical residue of tobacco smoke contamination which clings to hair, skin, clothing, furniture, wall, etc. According to the DH, it is a health hazard which affects particularly infants and toddlers;
- (c) ***Fixed penalty system.*** The fixed penalty system for smoking offences (see para. 1.6) has come into effect since 2009; and
- (d) ***Smoking cessation services.*** The lists of smoking cessation services in the guides are incomplete. Services provided by some NGOs (e.g. by the United Christian Nethersole Community Health Service and the Lok Sin

Tong Benevolent Society Kowloon — see Table 3 in para. 1.16) are not included in the lists.

3.5 In addition to the aforesaid four types of statutory NSAs (see para. 3.3), there are other types of statutory NSAs (see Appendix A). The TCO needs to consider preparing implementation guides for other types of statutory NSAs (including some general implementation guides covering a number of types of statutory NSAs).

Audit recommendations

3.6 **Audit has *recommended* that the Director of Health should:**

- (a) **update the guides for implementing smoke-free measures; and**
- (b) **in addition to the existing implementation guides for four types of statutory NSAs, consider preparing implementation guides for other types of statutory NSAs.**

Response from the Government

3.7 The Director of Health agrees with the audit recommendations.

Display of no-smoking signs

3.8 The TCO's implementation guides advise that venue managers should display sufficient no-smoking signs in prominent positions to remind people that smoking is prohibited at statutory NSAs. To this effect, the TCO has prepared no-smoking signs (see Photograph 3 for an example), which can be freely obtained from the TCO by venue managers.

Photograph 3

TCO's no-smoking sign



Source: Photograph taken by Audit in December 2017

3.9 According to a Circular entitled “The Smoke-Free Government” issued in September 2009 by the FHB, concerted efforts are required of government bureaux and departments to promote a smoke-free government. The Circular states that:

- (a) bureaux and departments should post sufficient no-smoking signs, showing the penalty level (i.e. \$1,500 — see para. 1.6), at statutory NSAs under their control and management; and
- (b) venue managers of government places open to the public should post no-smoking signs at all entrances, potential gathering spots of smokers, and partially enclosed indoor areas which may be mistaken as outdoor areas at which smoking is allowed.

3.10 Audit selected four types of statutory NSAs to inspect the display of no-smoking signs by venue managers of public and government places:

- (a) **Enclosed public places.** Some enclosed public places in outdoor areas are regarded as indoor public places as defined under the SPHO, and hence are statutory NSAs. According to the SPHO, “indoor” means:

- (i) having a ceiling or roof, or a cover that functions as a ceiling or roof; and
- (ii) enclosing at least up to 50% of the total areas on all sides, except for any window or door, or any closeable opening that functions as a window or door.

Examples of enclosed public places include enclosed staircases (see Photograph 4 in para. 3.13), enclosed pedestrian pavements (see Photograph 5 in para. 3.13), enclosed footbridges and enclosed tunnels;

- (b) ***Outdoor escalators.*** All escalators (both indoor and outdoor) are designated as statutory NSAs under the SPHO. Outdoor escalators may connect places (e.g. streets and footbridges) at which smoking is allowed;
- (c) ***Public pleasure grounds.*** PPGs are managed by the LCSD and include, for example, parks, gardens and sitting-out areas. The SPHO has designated PPGs as statutory NSAs, apart from the small number of exempted PPGs (Note 18). As at 31 December 2017, there were some 1,500 PPGs designated as statutory NSAs; and
- (d) ***Public transport facilities (PTFs).*** Apart from the 59 indoor PTFs (e.g. those located under building complexes), the SPHO has empowered the Director of Health to designate, by a gazette notice, outdoor PTFs as statutory NSAs. A PTF is defined as any area that consists of the termini of two or more modes of public transport for effecting interchange of passengers, or any bus termini of more than one specified route. As at 31 December 2017, 240 PTFs (both indoor and outdoor) were statutory NSAs.

Audit selected the above four types of statutory NSAs because, in Audit's view, while people are generally aware that smoking is banned at indoor workplaces and public places (e.g. restaurants and bars), they may not know that these four types of statutory NSAs are subjected to the smoking ban under the SPHO.

Note 18: *According to the Public Health and Municipal Services Ordinance (Cap. 132), the Director of Leisure and Cultural Services can designate a PPG or part of it as a smoking area.*

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3.11 To inspect the display of no-smoking signs at the four types of statutory NSAs, Audit visited three districts in the territory (i.e. the Eastern District on Hong Kong Island, the Sham Shui Po District in Kowloon and the Kwai Tsing District in the New Territories — Note 19). Audit found that there was no display of no-smoking signs at some statutory NSAs and there were people smoking at these NSAs. Details of Audit's examination are shown in paragraphs 3.12 to 3.18.

Need to improve the display of no-smoking signs

3.12 *Enclosed public places.* In the Kwai Tsing District, Audit identified 4 enclosed staircases. They connected to a PTF, and each of them had a cover and ran alongside a building structure. In the Eastern District and the Sham Shui Po District, Audit identified 1 and 3 enclosed pedestrian pavements respectively. Each of the 4 pavements had a cover and ran alongside a construction site.

3.13 At the aforesaid enclosed staircases and pedestrian pavements, Audit noted that:

- (a) there was no display of no-smoking signs; and
- (b) there was evidence of smoking as cigarette butts were found on the stairs or ground (see Photographs 4 and 5).

Note 19: *Audit randomly strolled through streets of the three districts to identify enclosed public places and outdoor escalators. For PPGs and PTFs, Audit randomly selected them from maps.*

Photograph 4

An enclosed staircase with cigarette butts



Source: Photograph taken by Audit in January 2018

Photograph 5

An enclosed pedestrian pavement with cigarette butts



Source: Photograph taken by Audit in January 2018

Facilitating the work of venue managers

3.14 **Outdoor escalators.** Audit identified 4 outdoor escalators in the Eastern District and 6 outdoor escalators in the Kwai Tsing District. These 10 outdoor escalators were all located in public housing estates of the districts. As these 10 outdoor escalators were all located in public housing estates (i.e. in domestic areas), Audit also visited Wan Chai where there were outdoor escalators located in proximity to office buildings (i.e. in non-domestic areas). Audit identified 10 outdoor escalators in Wan Chai. In total, 20 outdoor escalators were visited by Audit, each for half an hour.

3.15 Of the 20 outdoor escalators:

- (a) no-smoking signs were displayed at only 5 (25%) outdoor escalators (all in Wan Chai). At the remaining 15 (75%) outdoor escalators (the remaining 5 in Wan Chai and all the 10 in the Eastern District and the Kwai Tsing District), no-smoking signs were not displayed;
- (b) at 5 of the 15 outdoor escalators (2 in Wan Chai, 1 in the Eastern District and 2 in the Kwai Tsing District) at which no-smoking signs were not displayed, Audit spotted 6 persons smoking or carrying a lighted cigarette (see Photograph 6); and
- (c) at all of the 5 outdoor escalators at which no-smoking signs were displayed, Audit did not spot any persons smoking or carrying a lighted cigarette.

Photograph 6

**A person carrying a lighted cigarette
at an outdoor escalator in a public housing estate**



Source: Photograph taken by Audit in December 2017

Remarks: According to the SPHO, any person who smokes or carries a lighted cigarette at a statutory NSA commits an offence (see para. 1.5(a)).

3.16 **Public pleasure grounds.** Audit visited 9 PPGs managed by the LCSD (3 PPGs for each of the three districts — see para. 3.11), each for one hour. Audit’s findings were as follows:

- (a) at all of the 9 PPGs, no-smoking signs (and banners in some PPGs) were displayed. The vast majority of these signs/banners were the LCSD’s own signs/banners, while the remaining few were those of the TCO. Unlike the TCO’s signs/banners (see Photograph 3 in para. 3.8 and Photograph 10 in para. 3.17), the LCSD’s signs/banners only carried a “no smoking” logo and a “no smoking” message (see Photographs 7 and 8). They did not show information on the fixed penalty of \$1,500 for violation and the complaint hotline of either the LCSD or the TCO; and
- (b) at 8 (89%) of the 9 PPGs, Audit spotted 33 persons smoking (see Photograph 8). At all of the 9 PPGs, cigarette butts were found (see Photograph 9).

Photograph 7

LCSD's no-smoking sign displayed at a PPG

Information on the fixed penalty of \$1,500 and the complaint hotline not shown



Source: Photograph taken by Audit in January 2018

Photograph 8

A person spotted smoking at a PPG

Information on the fixed penalty of \$1,500 and the complaint hotline not shown



Source: Photograph taken by Audit in January 2018

Photograph 9

Cigarette butts at a PPG managed by LCSD



Source: Photograph taken by Audit in January 2018

3.17 **Public transport facilities.** The TCO is responsible for displaying no-smoking signs and banners at PTFs. Audit visited 9 PTFs (3 PTFs for each of the three selected districts — see para. 3.11), each for one hour. Audit’s findings were as follows:

- (a) at all of the 9 PTFs, the TCO’s no-smoking signs and banners (see Photograph 10) carrying information such as the fixed penalty for violation and the complaint hotline were displayed; and

Photograph 10

TCO's no-smoking banner



Source: Photograph taken by Audit in December 2017

- (b) at 6 (67%) of the 9 PTFs, Audit spotted 12 persons smoking (see Photograph 11).

Photograph 11

A person spotted smoking at a PTF



Source: Photograph taken by Audit in December 2017

3.18 Proper display of no-smoking signs and/or banners at statutory NSAs (i.e. showing information on the fixed penalty for violation and the complaint hotline) would help alert people to the fact that smoking is prohibited at these areas and subjected to a fine. It would also facilitate authorised officers of government departments (e.g. the HD and the LCSD — see para. 2.36) in taking enforcement actions. For example, in cases where people mitigate against smoking violation by claiming that they are not aware that they are smoking at statutory NSAs, the authorised officers could point them to the no-smoking signs.

Audit recommendations

3.19 **Audit has *recommended* that the Director of Health should:**

- (a) **identify (e.g. during the conduct of enforcement inspections — see para. 2.2) enclosed public places and outdoor escalators at which there are no display of no-smoking signs, and encourage venue managers of these venues (e.g. managers of construction sites in the case of pedestrian pavements and management companies in the case of outdoor escalators) to display no-smoking signs;**
- (b) **advise venue managers to display no-smoking signs (which can be freely obtained from the TCO) containing messages relating to the smoking ban (e.g. the fixed penalty for violation and the TCO’s complaint hotline); and**
- (c) **at statutory NSAs of which the venue managers are government departments, urge the managers to follow the requirements laid down in the FHB Circular (e.g. posting sufficient no-smoking signs showing the penalty level — see para. 3.9(a)) and to include other information such as the complaint hotlines of the TCO and/or departments concerned in their signs and/or banners.**

Response from the Government

3.20 The Director of Health agrees with the audit recommendations. She has said that it is an existing practice of TCIs to provide no-smoking signs and to educate venue managers of statutory NSAs to implement the smoking ban during their enforcement inspections. Looking forward, the DH will strengthen the practice.

Enforcement work of other government departments

3.21 Under the FPSOO, in addition to TCIs, authorised officers of the FEHD, the HD and the LCSD are empowered to issue FPNs at statutory NSAs under these government departments' management. To facilitate the FEHD, the HD and the LCSD in enforcing the smoking ban, the TCO:

- (a) has compiled guidelines on the issue of FPNs for their reference;
- (b) conducts joint operations (e.g. 48 operations in 2017) at the statutory NSAs managed by them so as to provide training to their authorised officers; and
- (c) on a half-yearly basis, provides them with information on recurrent complaints about smoking at the statutory NSAs under their management so as to facilitate them to initiate follow-up actions.

Need to step up enforcement efforts

3.22 As shown in paragraphs 3.14 to 3.16, there were incidents where people were found smoking at statutory NSAs (e.g. outdoor escalators and PPGs) under the management of the government departments. Audit analysed the FPNs issued by the FEHD, the HD and the LCSD in 2013 to 2017 and found that the number of FPNs issued by the FEHD and the LCSD was much lower than that of the TCO and the HD (see Table 13).

Table 13

**FPNs issued at statutory NSAs managed by
the FEHD, the HD and the LCSD
(2013 to 2017)**

Statutory NSAs managed by	FPNs issued by	No. of FPNs issued				
		2013	2014	2015	2016	2017
FEHD	FEHD	36	31	28	33	52
	TCO	555	482	451	466	517
HD	HD	226	310	318	445	410
	TCO	237	186	173	173	150
LCSD	LCSD	34	57	56	60	54
	TCO	461	381	398	445	495

Source: Audit analysis of TCO records

3.23 Audit considers that there is room for the FEHD and the LCSD to step up their enforcement efforts at the statutory NSAs under their management (e.g. by patrolling these areas more frequently and issuing FPNs where warranted). This could help enhance the effectiveness of the smoking ban. To help the government departments initiate their enforcement actions more effectively, Audit also considers that instead of half-yearly (see para. 3.21(c)), the TCO needs to provide them with information on recurrent smoking complaints on a more frequent basis. The TCO also needs to conduct more joint operations (see para. 3.21(b)) at the statutory NSAs managed by the government departments so as to provide more training to their authorised officers, where necessary.

Audit recommendations

3.24 **Audit has recommended that the Director of Health should:**

- (a) **provide the FEHD, the HD and the LCSD with information on recurrent complaints about smoking at the statutory NSAs managed by**

Facilitating the work of venue managers

them on a more frequent basis so as to facilitate them to initiate enforcement actions more effectively; and

- (b) conduct more joint operations at the statutory NSAs managed by the FEHD, the HD and the LCSD so as to provide more training to their authorised officers, where necessary.**

3.25 Audit has also *recommended* that the Director of Food and Environmental Hygiene and the Director of Leisure and Cultural Services should review the enforcement operations at the statutory NSAs under their management and step up enforcement efforts at these NSAs where warranted.

Response from the Government

3.26 The Director of Health agrees with the audit recommendations in paragraph 3.24. She has added that:

- (a) to facilitate the FEHD and the LCSD to implement the smoking ban in the venues under their management, the DH has been providing a list of venues under LREIs to these departments on a regular basis;
- (b) it is the TCO's practice to encourage and arrange joint inspections with relevant government departments to enhance the deterrent effect of the smoking ban in statutory NSAs under their management. In 2017, over 200 inspections were conducted jointly with relevant government departments; and
- (c) looking forward, the DH will increase the frequency of providing information on recurrent complaints about smoking to the two departments on a bi-monthly basis. The DH will also continue to inform relevant government departments about the complaints of smoking offences related to the venues under their management for parallel actions. Furthermore, the DH will continue to encourage more joint operations in future.

3.27 The Director of Food and Environmental Hygiene agrees with the audit recommendation in paragraph 3.25. She has said that:

Facilitating the work of venue managers

- (a) the FEHD has stepped up the enforcement against smoking offenders in market venues under its management since January 2018; and
- (b) the FEHD will explore with the TCO how best the two departments can mount more joint operations in public market venues to curb the smoking problem there.

3.28 The Director of Leisure and Cultural Services agrees with the audit recommendation in paragraph 3.25. She has said that:

- (a) the LCSD has been actively collaborating with the FHB and the DH for effective implementation of smoking ban at venues under the LCSD's purview. Members of the public have been educated not to smoke in the statutory NSAs through displaying notices and banners at the entrances as well as in prominent locations of LCSD venues;
- (b) not every PPG managed by the LCSD has been provided with on-site staff who are empowered to issue FPNs. Despite this, LCSD security guards who are not vested with the authority to issue FPNs would give verbal advice to smoking offenders whenever they spot offenders smoking inside LCSD venues during their routine patrol. LCSD security guards served over 80,000 verbal advice to smoking offenders every year between 2013 and 2017. Smoking offenders normally took the advice and stopped smoking. LCSD staff who are empowered to take law enforcement action would issue FPNs to smoking offenders during surprise inspections and law enforcement operations, in particular at venues with more smokers found; and
- (c) the LCSD will continue to step up enforcement efforts at venues that it manages.

PART 4: SMOKING CESSATION SERVICES AND OTHER MANAGEMENT MATTERS

4.1 This PART examines the DH's smoking cessation services and other management matters, focusing on the following areas:

- (a) provision of smoking cessation services through subvented organisations and DH clinics (paras. 4.2 to 4.12);
- (b) reporting of the achievement on smoking control (paras. 4.13 to 4.17); and
- (c) initiative for enhancing smoking control (paras. 4.18 to 4.22).

Provision of smoking cessation services through subvented organisations and DH clinics

4.2 As at 31 December 2017, there were seven subvented organisations (i.e. six NGOs and one university — see para. 1.8) (hereinafter referred to as Organisations A to G) providing smoking cessation and related services to the public. The DH has entered into an FSA with each of the organisations. The FSAs defined the services to be provided and the performance targets for the services (see Table 14).

Table 14

**Key services and performance targets of
subvented organisations**

Organisation	Key services	Key performance targets
A and B	Clinical and counselling services for smokers	Number of clients served
C	Counselling services targeting new immigrants and ethnic minorities	Number of smokers attending counselling and number of smokers referred to clinics
D	Counselling services targeting workplaces	Number of smokers attending counselling and number of companies served
E	Health promotion activities targeting primary and secondary schools	Number of schools and number of students served
F	Health promotion activities targeting kindergartens	Number of kindergartens and number of students served
G	A quitline for the youth	Number of callers to the youth quitline

Source: DH records

***Scope for improving the monitoring of
subvented organisations' performance***

4.3 According to the FSAs, subvented organisations were required to submit statistics on their attainment of performance targets. Audit noted that in 2012-13 to 2016-17, for 2 (29%) of the 7 organisations, the key performance targets had not always been attained (see Table 15).

Smoking cessation services and other management matters

Table 15

Attainment of key performance targets by two subvented organisations (2012-13 to 2016-17)

Subvented organisation	Performance target	Performance	2012-13	2013-14	2014-15	2015-16	2016-17
A	No. of clients served	Target	3,250	4,000	4,400	4,000	4,000
		Actual	2,497	4,239	3,601	3,760	4,278
		Target attained	×	✓	×	×	✓
B		Target	1,200	1,250	1,300	1,200	1,220
		Actual	1,497	1,140	1,072	1,089	1,271
		Target attained	✓	×	×	×	✓

Source: DH records

4.4 As shown in Table 15, in 3 (60%) of the 5 years 2012-13 to 2016-17, Organisations A and B had not attained their key performance targets. In view of the underperformance of these two organisations, in 2017, the DH had reduced the key performance targets and the annual subventions upon renewal of FSAs with the two organisations. Under the new FSAs (covering 2017-18 and 2018-19), the target number of clients had been reduced from 4,000 to 3,200 for Organisation A and from 1,220 to 1,100 for Organisation B. The annual subvention had been reduced from \$41.5 million to \$34 million for Organisation A and from \$7.6 million to \$7.2 million for Organisation B.

4.5 Audit noted that the DH monitored the performance of the 7 subvented organisations mainly by reviewing the performance reports submitted regularly by them, and by holding meetings with them to discuss their performance. Furthermore, according to the TCO, it had also conducted ad-hoc inspections at the organisations. For example, in 2015 to 2017:

- (a) as part of the international training programmes on smoking control organised by the TCO annually, TCO staff (and training programme

Smoking cessation services and other management matters

participants) paid visits to the smoking cessation clinics operated by Organisations A and B in December 2015, November 2016 and October 2017; and

- (b) TCO staff attended the health promotion activities conducted by Organisation E at a primary school in January 2016 and at another primary school in July 2017, and by Organisation F at a kindergarten in April 2017.

4.6 As provided in the FSAs, the DH may examine in detail the organisations' performance through conducting inspections. Audit considers that the TCO needs to take measures to better plan its inspections at the 7 subvented organisations taking into account the frequency of inspections and the need to conduct surprise inspections. Furthermore, the TCO needs to conduct the inspections in a more comprehensive manner. For example, it needs to ascertain whether DH subventions have been used solely for FSA activities and whether proper systems are in place for reporting performance and controlling the use of DH subventions.

Need to review the way forward of a DH clinic

4.7 Apart from providing smoking cessation services through the subvented organisations, the DH also provides smoking cessation services through 6 DH clinics (see para. 1.8) as part of their clinical services. For 5 of the 6 clinics, smoking cessation services are provided to civil service eligible persons as a condition of service.

4.8 For the remaining clinic, which is a primary care out-patient clinic (hereinafter referred to as the DH Clinic) located in Ngau Tau Kok, smoking cessation services are provided to members of the public. According to the DH, members of the public calling the DH Quitline (see para. 1.8) might be referred to the DH Clinic for smoking cessation services where appropriate. DH records indicated that, in 2009 to 2017, the number of referrals by the DH Quitline to the DH Clinic had decreased from 619 in 2009 by 606 (98%) to 13 in 2017, and the number of new cases had decreased from 354 in 2009 by 348 (98%) to 6 in 2017 (see Table 16).

Table 16

**Numbers of referrals and new cases of the DH Clinic
(2009 to 2017)**

Year	No. of referrals	No. of new cases
2009	619	354
2010	570	291
2011	329	228
2012	39	38
2013	26	24
2014	13	13
2015	11	10
2016	9	11
2017	13	6

Source: DH records

4.9 DH records did not indicate the reasons for the decrease in referrals and new cases over the years. Upon enquiry, the DH informed Audit in December 2017 that members of the public might not prefer the DH Clinic's services because:

- (a) the services were fee charging (Note 20), whereas the smoking cessation services provided by the subvented organisations (i.e. Organisations A to G) were free of charge; and
- (b) the location of the DH Clinic (in Ngau Tau Kok) might not be convenient to some people.

Note 20: *At present, the fee is \$135 for the first attendance, \$80 for each subsequent attendance, and \$15 for each drug item.*

4.10 Given the small number of referrals and new cases of the DH Clinic in recent years and the fact that similar smoking cessation services are being provided by DH subvented organisations, Audit considers that the DH needs to conduct a review on the way forward of the DH Clinic's smoking cessation services.

Audit recommendations

4.11 **Audit has *recommended* that the Director of Health should:**

- (a) **take measures to better plan the TCO's inspections at the organisations subvented by the DH for providing smoking cessation services and conduct more comprehensive inspections; and**
- (b) **review the way forward of the DH Clinic's smoking cessation services.**

Response from the Government

4.12 The Director of Health agrees with the audit recommendations. She has said that the TCO has been conducting irregular onsite inspections on the smoking cessation services provided by DH subvented organisations. Looking forward, the DH will formulate plans for the periodic inspections of the organisations.

Reporting of the achievement on smoking control

4.13 The DH implements its efforts in smoking control under two programmes (i.e. Statutory Functions and Health Promotion). As reported in the DH's Controlling Officer's Report:

- (a) ***Statutory Functions.*** The DH enforces the laws on smoking control (see PARTs 2 and 3); and
- (b) ***Health Promotion.*** The DH subvents COSH in providing promotional initiatives in support of smoking control (see PART 5). It also provides smoking cessation programmes and promotes smoking prevention in collaboration with the subvented organisations (see para. 4.2).

Smoking cessation services and other management matters

In 2012-13 to 2016-17, the DH's expenditure on smoking control had increased by 30% from \$142.2 million to \$184.5 million (see Table 17).

Table 17

**DH's expenditure on smoking control
(2012-13 to 2016-17)**

	2012-13	2013-14	2014-15	2015-16	2016-17
	(\$ million)				
<i>Statutory Functions</i>					
Enforcement of SPHO	39.6	42.7	49.9	51.5	54.5
<i>Health Promotion</i>					
Subventions to COSH, NGOs and university	56.3	72.0	79.4	80.5	83.2
Publicity and health education and smoking cessation	46.3	48.2	45.1	46.7	46.8
Sub-total	102.6	120.2	124.5	127.2	130.0
Total	142.2	162.9	174.4	178.7	184.5

Source: DH records

Scope for setting additional performance indicators

4.14 Audit noted that in the DH's Controlling Officer's Reports for 2013 to 2017, there was only one performance indicator (i.e. the number of publicity or educational activities delivered by COSH) that was relevant to the DH's smoking control efforts. Table 18 shows the number of activities reported under this performance indicator.

Table 18

**Performance indicator relevant to smoking control efforts
(2013 to 2017)**

	2013	2014	2015	2016	2017
Number of publicity or educational activities delivered by COSH (Actual)	420	445	432	423	430

Source: DH records

4.15 The DH had deployed a large amount of resources for implementing its efforts in smoking control (see Table 17). Such efforts included handling of complaints, conduct of inspections, issue of FPNs, and conduct of activities on publicity and health education as well as smoking cessation. In Audit’s view, it is undesirable that only one performance indicator had been set and published. Audit considers that the DH needs to set and publish additional performance indicators, which may include, for example, the number of inspections conducted at statutory NSAs and the number of calls received by the Quitline.

Audit recommendation

4.16 **Audit has recommended that the Director of Health should consider setting and publishing additional performance indicators so as to enhance the transparency and accountability of the DH’s efforts in smoking control.**

Response from the Government

4.17 The Director of Health agrees with the audit recommendation. She has said that the enforcement figures of smoking offences have been published on the TCO’s website. The DH will review and consider the feasibility of publishing more indicators and the applicability of the published information.

Initiative for enhancing smoking control

4.18 As mentioned in paragraph 1.3, the DH is responsible for implementing the Government's efforts in smoking control through a multi-pronged approach, comprising legislation and enforcement, publicity, education and smoking cessation services.

4.19 Over the past decades, Hong Kong's smoking prevalence had decreased from 23.3% in 1982 to 10% in 2017 (see para. 1.17). According to the DH, its vision is to reduce Hong Kong's smoking prevalence to less than 10%. To this end, the DH has considered amending the SPHO in the long run:

- (a) amending the SPHO is to impose legal liability on venue managers for not implementing the smoking ban; and
- (b) in the majority of overseas smoking control legislation, legal liability has been imposed on venue managers. For example:
 - (i) in Singapore, venue managers are legally responsible for preventing smoking offences at statutory NSAs;
 - (ii) in New Zealand, New South Wales of Australia and California of the United States of America, venue managers are legally liable if they allow smoking at statutory NSAs; and
 - (iii) in New York, it is unlawful for venue managers not to comply with the smoking ban.

4.20 In February 2018, the TCO informed Audit that imposing legal liability on venue managers would have a significant impact on various industries, and the industries would have concerns about the resistance of their employees and venue managers, and the effective implementation of the anti-smoking provisions in their premises.

Audit recommendation

4.21 **Audit has *recommended* that the Director of Health should keep under review the need for imposing legal liability on venue managers.**

Response from the Government

4.22 The Director of Health agrees with the audit recommendation. She has said that:

- (a) the DH noted that some overseas jurisdictions have imposed legal liability on venue managers for smoking offences in their venues. It is also noted that when implementing the relevant provisions, all governments have taken into consideration various factors including the reactions of the public and the industries concerned;
- (b) in 2006, when amending the SPHO, the Legislative Council discussed the proposal that venue managers of statutory NSAs should be liable for failure to stop smoking in their premises. There were concerns that the proposal would have a significant impact on various industries, and the industries were also concerned about the resistance of their employees and venue managers as well as about the effective implementation of the anti-smoking provisions in their premises. In order to strike a balance between the stakeholders' concerns and the operational difficulties, the Government eventually did not stipulate in the Amendment Ordinance of the SPHO that venue managers would be legally liable for failure to enforce the smoking ban in their premises; and
- (c) to impose legal liability on venue managers just like some overseas jurisdictions, the Government must study carefully and conduct extensive consultation with different stakeholders to explore whether the implementation of the relevant provisions is feasible.

PART 5: OPERATION OF THE HONG KONG COUNCIL ON SMOKING AND HEALTH

5.1 This PART examines the operation of COSH, focusing on the following issues:

- (a) governance of COSH (paras. 5.2 to 5.22); and
- (b) implementation of programmes by COSH (paras. 5.23 to 5.32).

Governance of COSH

5.2 COSH is a statutory body established in 1987 pursuant to the Hong Kong Council on Smoking and Health Ordinance (see para. 1.12). As at 31 December 2017, COSH consisted of 17 members, including the Chairman, the Vice-Chairman, and 15 other members (including 2 government officials, i.e. the Deputy Director of the DH and the Assistant Director (Publicity and Promotions) of the Information Services Department (ISD)). Members of COSH have been appointed by the Secretary for Food and Health, under delegated authority, for a term of two years (Note 21). Non-official members can be reappointed subject to the Government's six-year rule (i.e. the sum of all terms of a member is limited to six years). The 2 government officials are reappointed every two years.

5.3 Under COSH, five committees have been set up to assist it in carrying out its functions. The five committees are the Executive Committee, the Community Liaison Committee, the Education and Publicity Committee, the Information Research Committee and the Legislation Committee. Members of the committees consist of

Note 21: *According to the Hong Kong Council on Smoking and Health Ordinance, COSH shall consist of:*

- (a) *a Chairman and a Vice-chairman each of whom shall be appointed by the Chief Executive of the Hong Kong Special Administrative Region for a term not exceeding 3 years; and*
- (b) *not less than 13 nor more than 15 other persons each of whom shall be appointed by the Chief Executive for a term not exceeding 3 years.*

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those drawn from the Council and co-opted members. In addition, a Secretariat, which is headed by an Executive Director, has also been established to provide administrative support to the Council and committees. As at 31 December 2017, the Secretariat had a total of 9 staff (including the Executive Director).

5.4 COSH has entered into an FSA with the DH. The FSA has specified the following:

- (a) the scope of subvention (i.e. for implementing health promotion programmes and publicity campaigns and conducting research);
- (b) the basis of subvention (i.e. the discretionary grant basis — see Note 7 to para. 1.14);
- (c) performance standards (i.e. the target number of educational activities, publicity activities and participants — Note 22) and the performance monitoring arrangement (i.e. quarterly submission of performance statistics); and
- (d) financial management matters (e.g. submission of the annual budget, monthly reporting of income and expenditure, and annual auditing and reporting).

5.5 Audit examined the governance of COSH and found that there is scope for improvement as shown in paragraphs 5.6 to 5.18.

Need to enhance attendance rates at meetings

5.6 ***Overall attendance rates at Council/committee meetings.*** Table 19 shows the overall attendance rates (i.e. of all members) at Council/committee meetings in 2013-14 to 2017-18 (up to January 2018).

Note 22: *COSH is required to provide annually at least 340 educational activities and publicity activities (including at least 200 educational activities and 80 publicity activities). The total number of participants of educational activities should be at least 40,000.*

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Table 19

**Overall attendance rates at
Council/committee meetings
(2013-14 to 2017-18)**

Council/ committee	No. of members in each year	No. of meetings in each year	Overall attendance rate				
			2013-14	2014-15	2015-16	2016-17	2017-18 (No. of meetings held up to January 2018)
Council	15 to 17	4	81%	77%	82%	71%	78% (4)
Executive Committee	4	4	94%	100%	100%	100%	100% (3)
Community Liaison Committee	7 to 8	1 to 2	88%	57%	71%	64%	N.A. (0)
Education and Publicity Committee	8 to 11	1 to 3	68%	60%	59%	64%	N.A. (0)
Information Research Committee	5 to 8	2 to 3	63%	55%	63%	50%	71% (2)
Legislation Committee	5 to 6	1	100%	83%	100%	60%	80% (1)

Source: Audit analysis of COSH records

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5.7 As shown in Table 19, in 2013-14 to 2017-18, for meetings of the Council and the Executive Committee, the overall attendance rates were above 70% and 90% respectively. However, for some meetings of the other four committees, the overall attendance rates were below 70%. There is, in general, room for improving the overall attendance rates at committee meetings. Audit considers that COSH needs to monitor the overall attendance rates of members at meetings and take measures to improve the attendance rates where warranted.

5.8 *Attendance rates of individual members.* Table 20 shows individual members' attendance rates at Council/committee meetings in 2013-14 to 2017-18 (up to January 2018).

Table 20

**Individual members' attendance rates at
Council/committee meetings
(2013-14 to 2017-18)**

Attendance rate	No. of members				
	2013-14	2014-15	2015-16	2016-17	2017-18 (up to January 2018)
0%	0	3	0	1	0
1% to below 25%	0	0	0	0	0
25% to below 50%	4	1	4	4	3
50% to below 75%	1	4	5	2	3
75% to 100%	11	12	10	11	13
Total	16	20	19	18	19

Source: Audit analysis of COSH records

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5.9 As shown in Table 20, the attendance rates of some members (e.g. 5 members in 2016-17) were below 50% and, in particular, 1 member did not attend any meetings in 2016-17. Audit considers that COSH needs to take measures to improve the attendance rates of those members with low attendance rates at Council/committee meetings. Such measures may include, for example, issuing reminders to members well in advance to facilitate members to plan ahead their schedules.

Need to address issues relating to the attendance of government officials at meetings

5.10 *The Deputy Director of the DH.* According to the Efficiency Unit (EU)'s good practice guide entitled "Guide to Corporate Governance for Subvented Organisations" (the EU Guide), the role of a government representative appointed to the board of an organisation, apart from his/her legal duties as a board member (Note 23), is mainly to act as a link between the Government and the organisation. However, according to the EU Guide, there may be times when the Government representative should not be present in a board discussion, for fear of breaching the legal duties owed to the organisation, for example, in relation to the organisation's budget or bid for funding from the Government.

5.11 According to the DH, the appointment of the Deputy Director as a member of COSH was to maintain effective communication between the DH and COSH. Audit noted that the Deputy Director had participated in the meetings of the Council and the Executive Committee in which the annual budget and the application for supplementary grant (Note 24) were discussed and approved for submission to the Government. This arrangement did not seem to be in line with the EU Guide.

Note 23: *Legal duties of a board member include, for example, duty of care (e.g. to ensure that an information and reporting system exists) and duty of loyalty (e.g. a board member must cast aside any personal or professional interests and place the interests of the organisation ahead of him/her).*

Note 24: *Every year, in addition to a recurrent subvention, the DH provides a supplementary grant to COSH to conduct more educational and publicity activities. For 2016-17, the total subvention was \$22.9 million (2012-13: \$20.7 million) including the supplementary grant of \$9 million (2012-13: \$9.18 million). For 2016-17, with the provision of the supplementary grant, the target number of educational and publicity activities of COSH had been increased from 340 (see Note 22 to para. 5.4(c)) to 420.*

5.12 In February 2018, the TCO informed Audit that the participation of the Deputy Director in the discussion of COSH's annual budget and application for supplementary grant served the primary objective of acting as a link between the Government and COSH. The Deputy Director offered valuable guidance, comments, views and suggestions to COSH in a holistic manner to ensure that COSH's proposed work plans and programmes were working towards the Government's smoking control policy. The Council/Executive Committee of COSH understood that the programme and budget proposals agreed by the Council/Executive Committee with the Deputy Director's presence in the meetings did not imply that the proposals would invariably be approved by the DH subsequently.

5.13 As the memberships of the Council/Executive Committee may be subject to changes (members are appointed on a term of two years (see para. 5.2) and there may be movement of members between committees), new members may not be familiar with the roles and functions of the Deputy Director in the Council/Executive Committee as well as in taking part in the discussion of COSH's annual budget and application for supplementary grant in Council/Executive Committee meetings. Audit considers that COSH and the DH need to ensure that members of the Council/Executive Committee fully understand such roles and functions of the Deputy Director.

5.14 *The Assistant Director of the ISD.* According to the DH, the appointment of the Assistant Director (Publicity and Promotions) of the ISD as a member of COSH was to provide professional input on promotion activities conducted by COSH. However, Audit noted that in 2013-14 to 2017-18 (up to January 2018), a Principal Information Officer of the ISD represented the Assistant Director to attend all the meetings of the Council and the Education and Publicity Committee. Audit further noted that COSH had not laid down rules for alternate members to attend meetings. Audit considers that COSH and the ISD need to review and revise the arrangement (e.g. laying down rules relating to attendance at meetings by alternate members).

Need to lay down rules on meeting proceedings

5.15 According to the EU Guide, for the effective functioning of a board, rules should be made on meeting proceedings, such as the need to:

- (a) ensure that the quorum is met during meetings; and

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- (b) circulate draft minutes after meetings.

Audit noted that COSH had not set a quorum for the five committees (Note 25). In February 2018, COSH informed Audit that in practice it had adopted a quorum of 50% of the number of committee members for each of the five committees. Audit considers that COSH needs to formally set a quorum for the five committees.

5.16 Audit further noted that while draft minutes had been circulated after meetings, they had not been circulated in a timely manner. It was a practice of COSH that the draft minutes of a Council/committee meeting were circulated one week before the next meeting (the Council/committees held 1 to 4 meetings a year — see Table 19 in para. 5.6). Audit considers that COSH needs to circulate draft minutes to members as soon as possible so as to facilitate them to confirm the matters discussed in meetings.

Need to disclose remunerations of senior staff

5.17 In March 2003, the Director of Administration issued a Circular Memorandum, promulgating a set of guidelines for the control and monitoring of remuneration practices in subvented bodies by the Government. According to the guidelines:

- (a) a subvented body which receives more than 50% of its operating income from the Government should review the number, rank and remunerations of its senior staff, and submit annual reports on the review findings to the relevant Director of Bureau. With justifications, the Director of Bureau may approve the subvented body to submit biennial or triennial reports; and
- (b) to enhance transparency, the Director of Bureau should work out with the subvented body an arrangement for the public disclosure of the review reports.

Note 25: *The quorum for the Council is 8 members, as laid down in the Hong Kong Council on Smoking and Health Ordinance.*

5.18 Currently, on a triennial basis, COSH reviews the number, rank and remunerations of its staff at the top three tiers, and submits the review findings to the DH for consideration by the FHB. The latest review was completed in May 2016. COSH had published on its website a message that the remuneration packages of its staff at the top three tiers had been reviewed and recommended to remain unchanged. COSH, however, did not publish on its website the details of the review report (showing information such as the number, rank and remuneration packages of its staff at the top three tiers). Audit considers that, to enhance transparency, the DH needs to consider requiring COSH to do so.

Audit recommendations

5.19 **Audit has recommended that COSH should:**

- (a) **monitor the overall attendance rates of members at Council/committee meetings and take measures to improve the overall attendance rates where warranted;**
- (b) **take measures to improve the attendance rates of members with low attendance rates at Council/committee meetings;**
- (c) **in conjunction with the DH, take measures to ensure that members of the Council/Executive Committee fully understand the roles and functions of the DH's Deputy Director in the Council/Executive Committee as well as in taking part in the discussion of COSH's annual budget and application for supplementary grant in Council/Executive Committee meetings;**
- (d) **in conjunction with the ISD, review and revise the arrangement whereby the ISD's Assistant Director is represented by a Principal Information Officer in all Council/committee meetings;**
- (e) **set a quorum for committee meetings; and**
- (f) **circulate draft minutes of meetings for comments by Council/committee members as soon as possible.**

5.20 Audit has also *recommended* that the Director of Health should consider requiring COSH to publish the details of review reports concerning remunerations of the staff at the top three tiers of COSH.

Response from COSH and the Government

5.21 COSH agrees with the audit recommendations in paragraph 5.19. The Executive Director of COSH has said that COSH will:

- (a) set up a reminder system to remind members to attend meetings;
- (b) review the existing practice and take necessary measures to ensure that members of the Council/Executive Committee fully understand the roles and functions of relevant government officials in the meetings;
- (c) review the delegation arrangement whereby the ISD's Assistant Director is continuously represented by a Principal Information Officer;
- (d) lay down the quorum for committee meetings;
- (e) circulate draft minutes in a timely manner; and
- (f) review the mechanism on publishing the details of review reports concerning remunerations of the staff at the top three tiers of COSH.

5.22 The Director of Health agrees with the audit recommendation in paragraph 5.20.

Implementation of programmes by COSH

5.23 COSH implements the following programmes:

- (a) ***Community education programmes.*** These include, for example, the Health Talk Programme, the Interactive Education Theatre Programme, and the production of announcements in the public interest;
- (b) ***Publicity programmes.*** These include, for example, the World No Tobacco Day, the Smoke-free Teens Programme, the Elderly Smoking Cessation Promotion Project, the “Quit to Win” Smoke-free Community Campaign, and the Smoke-free Leading Company Awards; and
- (c) ***Research and conference programmes.*** These include, for example, the Tobacco Control Policy-related Survey and the Cross-strait Conference on Tobacco Control.

5.24 Audit selected the following two major programmes to examine their implementation and identify areas for improvement:

- (a) ***Interactive Education Theatre Programme.*** In 2016-17, the expenditure of the Programme was \$1.5 million, accounting for 12% of the total expenditure on all programmes (see para. 5.23) of \$12.1 million; and
- (b) ***“Quit to Win” Smoke-free Community Campaign.*** In 2016-17, the expenditure of the Campaign was \$3.2 million, accounting for 26% of the total expenditure on all programmes of \$12.1 million.

Audit findings are shown in paragraphs 5.25 to 5.30.

Interactive Education Theatre Programme

5.25 **Background.** In every school year (Note 26), COSH cooperates with a local professional troupe (selected through restricted tendering — Note 27) to produce a show (which has a particular theme and lasts for about one hour). The troupe stages a show performance at each of the primary schools participating in the Programme, and about 100 show performances are staged reaching more than 20,000 students and teachers. These performances are to inform students of the harmful effects of smoking, and to equip them to promote a smoke-free lifestyle and encourage their family members to quit smoking.

5.26 **The 2016-17 Programme.** A total of 95 performances were staged in the six months between October 2016 and March 2017. Take-home materials were given to attending students to strengthen their smoke-free knowledge and facilitate their discussion with family members. According to surveys conducted at the scene, majority of attending students had enjoyed the performances, and had improved their smoke-free knowledge.

5.27 **Audit findings.** In recruiting schools to participate in the Programme, COSH sent invitations to all primary schools (about 500 in number). Audit noted that, in the five school years 2012/13 to 2016/17, some 230 schools had participated in the Programme, accounting for about 46% of all primary schools. However, about 270 (54%) schools had not participated in the Programme. Audit considers that, in order to expand the outreach of the Programme, COSH needs to enhance its efforts to recruit those schools that have not participated in the Programme.

“Quit to Win” Smoke-free Community Campaign

5.28 **Background.** COSH implements the Campaign as follows:

- (a) it recruits district organisations as district partners to organise smoke-free promotion activities. The purpose is to raise the community’s participation

Note 26: *A school year starts from September of a year to August of the following year.*

Note 27: *In restricted tendering, invitations to tender are sent to a restricted number of suppliers of goods or services.*

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in smoking control and to strive for a smoke-free community. COSH offers financial support to district partners (e.g. \$30,000 for each district in the 7th Campaign in 2016-17) to organise smoke-free promotion activities;

- (b) it commissions a university in Hong Kong to organise smoking cessation training for staff and volunteers of district partners and for university students to equip them to carry out smoking cessation promotion and counselling (e.g. in recruiting participants for the “Quit to Win” Contest — see (c) below); and
- (c) it organises sessions (e.g. 68 sessions in the 7th Campaign), covering the whole territory, to recruit smokers to participate in the “Quit to Win” Contest, which aims to encourage smokers to quit smoking through a contest. For participating smokers, smoking cessation counsellors of the university follow up these smokers (by giving advice and assistance through telephone interviews) for six months. Participants who quit the habit after three months can join a lucky draw to win prizes.

5.29 ***The 7th “Quit to Win” Smoke-free Community Campaign.*** The major activities of the Campaign were organised in the four months between June and September 2016, during which:

- (a) 21 district organisations were recruited. They organised 37 smoke-free promotion activities, including health talks, street promotions, carnivals, drawing and photography competitions, etc. These activities reached more than 18,000 members of the public; and
- (b) more than 1,300 smokers were recruited to join the Contest. After three months of counselling services provided by the university, the self-reported quit rate was 12.5%, while the university’s validated quit rate was 6.2%.

5.30 ***Audit findings.*** In recruiting district organisations, COSH approached the 18 District Councils in the territory for their assistance. If there were no nominations from the District Councils, COSH would attempt to recruit district organisations through its own network. Nevertheless, Audit noted that, no district organisations had been recruited for a number of districts in recent years. For example, no district organisations had been recruited for the 5 Campaigns since 2012-13 for 3 districts, and for the 4 Campaigns since 2013-14 for 1 district. Audit considers that, to expand

the outreach of the Campaign, COSH needs to enhance its efforts to recruit district organisations from those districts where no organisations have been recruited in recent years.

Audit recommendations

5.31 **Audit has *recommended* that COSH should enhance the efforts to recruit:**

- (a) **schools that have not participated in the Interactive Education Theatre Programme to join the Programme; and**
- (b) **district organisations from those districts where no organisations have been recruited in recent years to participate in the “Quit to Win” Smoke-free Community Campaign.**

Response from COSH

5.32 **COSH agrees with the audit recommendations. The Executive Director of COSH has said that COSH will:**

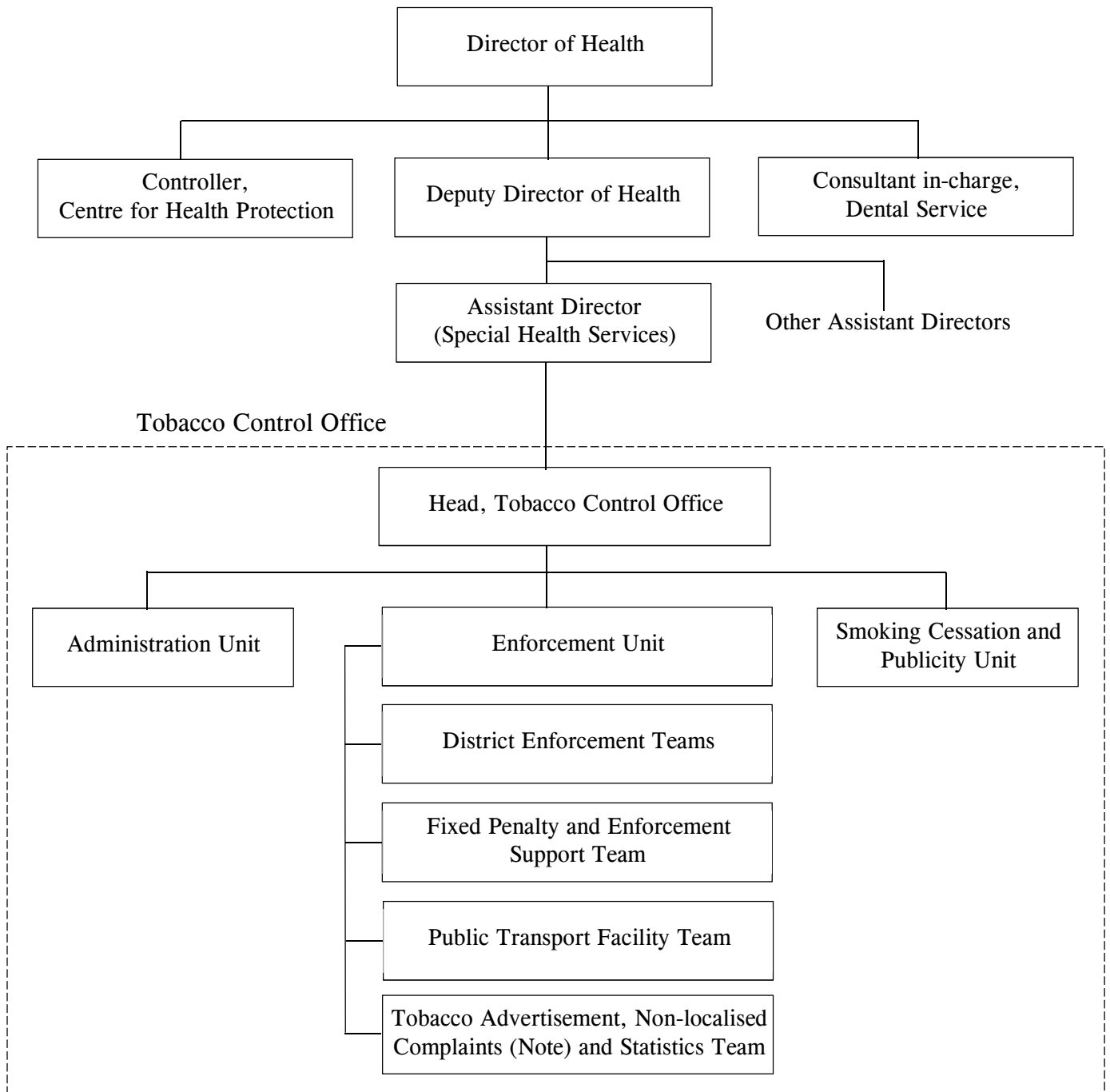
- (a) **review the invitation mechanism in order to encourage the participation from schools in the Interactive Education Theatre Programme; and**
- (b) **review the criteria and/or procedures in order to encourage the participation in the “Quit to Win” Smoke-free Community Campaign.**

**Statutory no smoking areas under the
Smoking (Public Health) Ordinance**

Indoor statutory NSAs	Indoor and outdoor statutory NSAs	Other statutory NSAs
<p>Indoor workplaces and offices</p> <p>Indoor public places (e.g. lift lobbies and back stairs)</p> <p>Footbridges</p> <p>Shops, department stores, shopping malls, publicly or privately operated markets and supermarkets</p> <p>Banks</p> <p>Restaurants</p> <p>Bars, nightclubs, mahjong-tin kau premises, bathhouses and massage establishments</p> <p>Residential care homes and treatment centres</p>	<p>Public lifts and escalators</p> <p>Cinemas, theatres, concert halls and amusement game centres</p> <p>Child care centres, schools, universities and tertiary institutes</p> <p>Hospitals</p> <p>Hong Kong Wetland Park</p> <p>Public pleasure grounds</p> <p>Public swimming pools and bathing beaches managed by the Leisure and Cultural Services Department</p> <p>Hong Kong Stadium and Mongkok Stadium</p> <p>Approved institutions where probationers are placed, reformatory schools and places of refuge</p>	<p>Public transport carriers</p> <p>Public transport facilities</p> <p>8 bus interchanges (the Cross-Harbour Tunnel, the Eastern Harbour Crossing, the Lion Rock Tunnel, the Shing Mun Tunnels, the Tai Lam Tunnel, the Tate's Cairn Tunnel, the Tsing Sha Highway and the Western Harbour Crossing)</p>

Source: TCO records

**Tobacco Control Office:
 Organisation chart
 (31 December 2017)**



Source: DH records

Note: “Non-localised complaints” is a term used by the TCO. According to the TCO, these are complaints about matters not relating to particular physical locations but relating to, for example, tobacco advertisements on publications and the Internet.

Acronyms and abbreviations

Audit	Audit Commission
COSH	Hong Kong Council on Smoking and Health
DH	Department of Health
EOs	Executive Officers
EU	Efficiency Unit
FEHD	Food and Environmental Hygiene Department
FHB	Food and Health Bureau
FPN	Fixed penalty notice
FPSOO	Fixed Penalty (Smoking Offences) Ordinance
FSA	Funding and Service Agreement
HD	Housing Department
ISD	Information Services Department
LCSD	Leisure and Cultural Services Department
LREIs	Locations requiring enhanced inspections
NGOs	Non-governmental organisations
NSAs	No smoking areas
PPGs	Public pleasure grounds
PTFs	Public transport facilities
SPHO	Smoking (Public Health) Ordinance
TCIs	Tobacco Control Inspectors
TCO	Tobacco Control Office
WHO	World Health Organization