

CONSUMER PROTECTION AGAINST UNFAIR TRADE PRACTICES, UNSAFE GOODS, AND SHORT WEIGHTS AND MEASURES

Executive Summary

1. Hong Kong is a renowned shoppers' paradise with a total retail sales value of \$436.6 billion in 2016. According to the Commerce and Economic Development Bureau (CEDB), the primary objectives in consumer protection policy are: (a) to ensure that consumer products are safe and offered in accordance with good trade practices, and avenues for redress are available; and (b) to facilitate consumer access to legal remedies. The Customs and Excise Department (C&ED) is responsible for enforcing four consumer protection Ordinances: (i) the Trade Descriptions Ordinance (TDO — Cap. 362) which prohibits application of false trade descriptions and common unfair trade practices against consumers of goods and services; (ii) the Weights and Measures Ordinance (WMO — Cap. 68) which prohibits the use of false or defective weighing and measuring equipment for the purpose of trade; (iii) the Consumer Goods Safety Ordinance (CGSO — Cap. 456) which requires that consumer goods supplied for local consumption are reasonably safe; and (iv) the Toys and Children's Products Safety Ordinance (TCPSO — Cap. 424) which requires that toys and children's products supplied for local consumption are reasonably safe. In 2016-17, the C&ED deployed 246 staff and spent \$121.2 million on the enforcement of the four Ordinances. The Communications Authority, with the support of the Office of the Communications Authority (OFCA), is responsible for the enforcement of the TDO in relation to the provision of licensed telecommunications or broadcasting services. As at 31 October 2017, OFCA deployed 38 staff to carry out the enforcement work among other duties. The Consumer Council (CC) is a statutory body established to protect consumer interests through other measures such as conciliating consumer disputes, disseminating information and rendering advice to consumers, and organising consumer education activities. The CC is not a law enforcement agency and does not possess the power of investigation or adjudication. Instead, the CC handles complaints by means of conciliation, providing a platform for consumers and traders to resolve disputes by mutually acceptable agreements. The CC, with an establishment of 150 staff as at 31 March 2017, received recurrent subventions of \$115.4 million from the Government for 2016-17. The Audit

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Commission (Audit) has recently conducted a review to examine the efforts made by the C&ED, OFCA and CC to protect consumer interests with a view to identifying areas of improvement.

Enforcement work against unfair trade practices

2. *Implementation of the 2012 Amendment Ordinance.* The Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 was enacted in July 2012 to, among other things: (a) extend the coverage of the TDO to prohibit false trade descriptions in respect of services (in addition to goods); and (b) introduce criminal offences to deter the common unfair trade practices specified in the TDO. After the 2012 Amendment Ordinance came into full operation on 19 July 2013, the Government briefed the Legislative Council (LegCo) Panel on Economic Development on the implementation progress from 2014 to 2016. At the Panel meeting of May 2016, two Members considered that the prosecution rate was low compared to the number of complaints. In response, the C&ED explained that: (i) it was not suitable to deduce the prosecution rate on the basis of the number of complaints because some complaints did not involve contravention of the TDO and some involved the same traders and were hence processed as one investigation case; and (ii) the C&ED had initiated prosecution in 220 cases (16% of 1,363 completed investigations), including 7 successfully prosecuted service-related cases and 213 goods-related cases with 95% successful prosecution rate (paras. 1.5(b), 2.2 and 2.3(b)).

3. *Need to conduct a comprehensive review on the enforcement of the amended TDO.* In 2015 and 2016, OFCA conducted reviews of the enforcement of the amended TDO and found that it was more difficult to collect sufficient evidence against misconduct relating to services than goods and the criminal regime under the TDO required more stringent rule of evidence to prove an offence beyond reasonable doubt. Audit analysis of the enforcement statistics from July 2013 to December 2017 revealed that: (a) for OFCA, the prosecution rate for services was low (3%); and (b) for the C&ED, the prosecution rate for goods (27%) was more than three times higher than that for services (6%). According to the C&ED, there were a number of factors affecting the prosecution rates other than insufficient evidence (e.g. complainants' withdrawal of their complaints). In Audit's view, there is a need to ascertain the major contributing factors of the lower prosecution rate for services in order to enhance the effectiveness of the amended TDO. In light of the difficulty in collecting sufficient evidence against misconduct and the lower prosecution rate for

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services, and with the lapse of over four years since the implementation of the amended TDO, it is opportune to undertake a comprehensive review on the enforcement issues (paras. 2.4, 2.6 and 2.7).

4. ***Inadequacies in the information exchange and case referral between the enforcement agencies and CC.*** In December 2012, the Government informed the LegCo Panel on Economic Development that in connection with the implementation of the 2012 Amendment Ordinance, an electronic platform would be established for referral of cases between the C&ED and CC. The electronic platform (in the form of computer system interface) was established by enhancements to the computer systems of the CC and C&ED at a total cost of \$2 million which were completed in August 2014 and February 2016 respectively. The CC had shared unfair trade practice information with the C&ED since September 2014. On the other hand, the C&ED made minor enhancement to its existing system in 2014 to receive information. After the roll-out of its enhanced system in February 2016, the C&ED had not used the computer system interface for referring cases to the CC for conciliation. Moreover, the C&ED only started to use the computer system interface to share case information with the CC in February 2018. According to the C&ED, further system enhancements were required for referring cases to the CC for conciliation. Audit also noted that OFCA was not involved in setting up the electronic platform for information exchange and case referral (paras. 2.8 to 2.11, 2.13 and 2.14).

5. ***Enforcement work of the C&ED.*** The C&ED's enforcement work of the TDO is divided between its Intellectual Property Investigation Bureau (IPIB) and Trade Descriptions Investigation Bureau (TDIB). The two bureaux deployed 190 staff and spent \$92.9 million on the enforcement of the TDO in 2016-17. The IPIB is responsible for the enforcement of the TDO in relation to the supply of services and specified types of goods (notably ginseng, dried seafood and mobile phones which may involve syndicate crimes) while the enforcement responsibility for other goods rests with the TDIB. Their enforcement work includes: (a) handling of complaints; (b) patrol operations; (c) investigations; and (d) administering prosecutions and sanctions. In 2017, there were 6,922 TDO-related complaints, and the IPIB and TDIB completed 1,997 and 1,491 investigations, and instigated 22 and 50 prosecutions under their respective purview. Significant convicted cases in recent years included misleading pricing of goods at ginseng/dried seafood shops, aggressive commercial practices at a beauty parlor and a fitness centre, and false trade descriptions of goods sold at supermarkets (paras. 1.6, 2.7(b), 2.21, 2.22 and 2.30).

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6. ***Areas for improvement in the IPIB's enforcement work.*** Timeliness in conducting investigations is important to protect consumer interests as unfair trade practices could be promptly curbed to prevent more consumers from being preyed upon. Based on the C&ED's computer records of 2,960 investigations completed from July 2013 to 2 November 2017, Audit found that the IPIB had taken more than one year to close 1,532 (52%) investigation case files. According to the C&ED, the time required for each investigation depended on a number of factors (such as its complexity) and all investigations were completed within the statutory time limit for prosecution (para. 2.23). However, Audit's sample check of 50 investigation cases has revealed the following issues:

- (a) ***Need to step up supervisory oversight of investigation progress and fieldwork.*** According to the IPIB's Work Manual, supervisors shall monitor the progress of the investigation cases by reference to the progress reports submitted by case officers. For 7 of the 50 cases examined, 56 progress reports were submitted from 2014 to 2017. Audit found that:
 - (i) 5 (9%) reports were not signed off by supervisors concerned;
 - (ii) 19 (34%) reports were signed off more than 9 months after submission;
 - and (iii) 7 (12%) signed-off reports were undated. There was no assurance that timely supervisory checks had been properly conducted in these 31 reports. The Work Manual also requires supervisory check on surveillance/decoy operations. However, in 42 of the 50 cases examined which involved such operations, there was no record showing that supervisory check had been conducted for 214 operations in 38 (90%) cases (para. 2.26); and
- (b) ***Need to meet the internal time standards in handling investigation cases.*** To facilitate the intelligence collection and analysis work by the C&ED's Intelligence Bureau, the IPIB has set internal time standards for the submission of bimonthly reports on investigation results and reporting closed case information to the Intelligence Bureau. Audit examination of 50 investigations revealed that: (i) of 726 reports on investigation results submitted from January 2014 to October 2017, 120 (16.5%) had exceeded the two-month submission time standard by 1.1 to 6.3 months; and (ii) in 35 (70%) cases examined, the one-month time standard for reporting closed case information to the Intelligence Bureau was exceeded by 1.2 to 13.5 months (para. 2.27).

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7. ***Areas for improvement in the TDIB's enforcement work.*** The C&ED received 3,260 and 4,242 goods-related complaints from the public in 2016 and 2017 respectively. The C&ED has set a performance target in its Controlling Officer's Report (COR) to commence investigation into urgent complaints within 24 hours upon receipt of complaints. According to the C&ED, urgent complaints include those cases lodged by short-haul visitors or involving mobile/temporary stalls, that may require immediate investigation or action to be taken. The TDIB has also set time standards for completing investigations, i.e. within 4 months for cases not resulting in enforcement actions (e.g. seizure) and 6 months for cases with enforcement actions taken (paras. 1.9, 2.30 and 2.31). Audit examination has revealed the following issues:

- (a) ***Need to improve complaint handling and reporting achievement of key performance target in COR.*** Based on the information obtained from the TDIB, of the 3,260 goods-related complaints in 2016, 45 (1.4%) were classified as urgent cases requiring commencement of investigations within 24 hours upon receipt of the complaints. Audit found that the 24-hour time target for commencing investigation was not met in 12 cases. In response to Audit's enquiry, the C&ED in February and March 2018 said that: (i) 31 of the 45 cases had been misclassified as urgent cases (comprising the 12 cases found by Audit to have taken longer than 24 hours to commence investigations and another 19 cases with actions taken within 24 hours); (ii) the 31 cases were misclassified because for 19 cases involving temporary stalls, the durations of their operations were later found to be not temporary (longer than 24 hours); (iii) for another case involving a tourist, the complaint was lodged by e-mail after she had left Hong Kong; (iv) for the remaining 11 cases, they did not involve short-haul visitors or temporary stalls; and (v) only 14 cases (45 less 31) were confirmed urgent and all of them had met the 24-hour target. In Audit's view, the fact that the 31 urgent cases were only discovered by the C&ED to have been misclassified during this audit after the 24-hour performance target had been reported as 100% achieved based on 45 urgent cases suggested inadequate checking of: (i) the nature of the complaints in their classification; and (ii) the supporting records for reporting performance (paras. 2.31 and 2.32); and
- (b) ***Need to improve the timeliness in completing investigation work.*** Audit found that of 4,990 completed investigation cases for complaints received between July 2013 and December 2017, 1,946 (39%) cases could not meet the time standards, including 5 of the 14 urgent complaint cases of 2016.

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Among the 1,946 cases, the time taken to complete 38% of 1,328 cases not resulting in enforcement actions and 50% of 618 cases with enforcement actions taken had exceeded their respective time standards by more than 90 days. Audit examination of 30 cases not meeting the time standards revealed that the long time taken in carrying out test purchases and sending samples for laboratory testing had contributed to the delays. For example, in three cases that took more than two months to conduct test purchases after commencement of investigation, there was no documented justification for the long time taken. At present, there is no exception report generated by the C&ED's computer system to facilitate the monitoring of the delayed investigation cases (paras. 2.33 to 2.35).

Enforcement work against unsafe goods, and short weights and measures

8. The Consumer Protection Bureau (CPB) of the C&ED is responsible for enforcing the CGSO and TCPSO against unsafe goods, and the WMO against short weights and measures. Its enforcement work includes: (a) handling of complaints on alleged offences; (b) conducting proactive spot checks and surveillance at retail shops; (c) conducting investigations on irregularities detected; and (d) administering prosecutions and sanctions. It deployed 56 staff and spent \$28.3 million on enforcing the three Ordinances in 2016-17. In 2017, the CPB received a total of 562 complaints, conducted 4,758 spot checks and completed 929 investigations under the three Ordinances (paras. 1.6 and 3.2 to 3.7).

9. ***Areas for improvement in spot checks.*** The objectives of spot checks are to detect the sale of unsafe goods under the CGSO and TCPSO, and short-weighted goods under the WMO. Audit has analysed the results of 6,740 CGSO-related, 7,371 TCPSO-related and 8,073 WMO-related spot checks conducted from 2013 to 2017 (paras. 3.8 and 3.13) and found the following issues:

- (a) ***Need to address the issue of high proportion of cases with target products not found in CGSO and TCPSO-related spot checks.*** Target products were not found in a high proportion of spot checks (81% for CGSO-related products and 55% for TCPSO-related products). While some overseas recalled products might not be available in the local market, Audit noted that some general types of products were also reported by CPB staff to be not found in spot checks, e.g. disposable gloves were reported not found in

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6 (38%) of 16 CGSO-related spot checks and infant toothbrush was reported not found in 41 (68%) of 60 TCPSO-related spot checks. The Intelligence Bureau of the C&ED facilitates the CPB in compiling a Company/Product List. The List is used as a reference for carrying out surveillance on the target product types as set out in the quarterly work plans. However, in 5% of the CGSO-related spot checks and 29% of the TCPSO-related spot checks, the target shops were found by CPB staff to have been vacated/closed or not having sufficient quantity of the target products for sample testing (paras. 3.9 and 3.10);

- (b) *Need to conduct more CGSO and TCPSO-related spot checks on online sales.* While the CPB has included goods supplied online in its spot check programme since April 2013, the number of spot checks on online sales averaged 8 a year compared to some 2,800 a year on retail shops. The detection rates of suspected offences were 16% for spot checks on online sales versus 1.1% on retail shops. In line with the growing popularity of online sales transactions, the C&ED needs to conduct more spot checks in this regard (para. 3.11);
- (c) *Need to address the decreasing detection rates of WMO-related spot checks.* The detection rate of suspected offences as a percentage of WMO-related spot checks decreased from 5.1% in 2013 to 0.5% in 2017. Audit analysed the 163 spot checks with suspected offences detected from 2013 to 2017 and found that 161 (99%) were by way of test purchases. While the spot check results suggested that test purchase was a more effective detection tool than equipment check, the proportion of test purchases among spot checks decreased from 64% in 2013 to 16% in 2017 (paras. 3.13 and 3.15); and
- (d) *Need for timely approval of WMO-related work plans and adequate spot checks for target trades.* According to the C&ED, WMO-related spot checks were performed in accordance with quarterly work plans which set out the target trades selected on a risk basis. However, all of the quarterly work plans for 2015 to 2017 were approved 9 to 34 days (averaging 13 days) after the commencement of the relevant quarters. Moreover, there was no laid-down guideline on the proportion of spot checks for the target trades. In 7 of 11 quarters from 2015 to September 2017, the percentages of spot checks for some target trades were less than those of the non-target trades (paras. 3.16 and 3.17).

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10. ***Areas for improvement in investigation work.*** Time is of the essence in enforcing the CGSO and TCPSO against unsafe goods and the WMO against short weights and measures. The C&ED has set performance targets in the COR for commencing investigations into: (a) urgent complaints within 24 hours upon receipt of complaints; and (b) priority complaints within 3 working days upon assessment of complaints. According to the C&ED, for CGSO or TCPSO-related cases, urgent complaints include cases: (i) involving injury; (ii) from complainants who have requested the C&ED to immediately conduct on site investigations with adequate justifications; or (iii) involving retailers who may terminate their short-term tenancy agreements at any time. Priority complaints include cases: (i) involving public/media concerns; (ii) from complainants asking for a reply on the progress of investigations; or (iii) involving products suspected of posing significant hazards to consumers. The CPB has also set internal time standards for completing: (a) CGSO and TCPSO-related investigations within 4 months for cases not resulting in enforcement actions and 6 months for cases with enforcement actions taken; and (b) within 3 and 4 months respectively for WMO-related investigations (paras. 3.3, 3.18 and 3.20). Audit examination has revealed the following areas for improvement in the CPB's investigation work:

- (a) ***Need to improve complaint handling and reporting achievement of key performance target in COR.*** Based on the information obtained from the CPB, of the 160 CGSO or TCPSO-related complaints in 2016, 72 (45%) were classified as urgent cases requiring commencement of investigations within 24 hours upon receipt of the complaints. Audit found that the 24-hour time target for commencing investigation was not met in 39 cases. In response to Audit's enquiry, the C&ED in March 2018 said that: (i) 70 of the 72 cases had been misclassified as urgent cases (comprising the 39 cases found by Audit to have taken longer than 24 hours to commence investigations and another 31 cases with actions taken within 24 hours); (ii) 47 of the 70 misclassified cases fell within the definition of priority cases as they either involved significant hazards (32 cases), public/media concerns (4 cases) or complainants requesting a progress reply (11 cases); (iii) the remaining 23 (70 less 47) cases were not in the nature of an urgent or priority case and hence fell within the low-priority category; and (iv) only 2 cases (72 less 70) were confirmed urgent and all of them had met the 24-hour target. In Audit's view, the fact that the 70 urgent cases were only discovered by the C&ED to have been misclassified during this audit after the 24-hour performance target had been reported as 100% achieved based on 72 urgent cases suggested inadequate checking of: (i) the nature of the complaints in their

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classification; and (ii) the supporting records for reporting performance (paras. 3.18 and 3.19); and

- (b) ***Need to improve the timeliness in completing investigation work.*** Audit analysed the 4,978 completed investigations in relation to the three Ordinances for the period from 2013 to September 2017 and noted that inability to meet the specified time standards was a cause for concern, particularly in respect of the CGSO and TCPSO-related cases, being 56% and 65% respectively. Ageing analysis showed that the extent of delays was also more significant for the CGSO and TCPSO-related cases, e.g. 52% and 62% respectively of those cases with enforcement actions taken were delayed for over 90 days (averaging 164 days). Audit examination of 60 completed investigations not meeting the time standards revealed that: (i) unsafe goods and other offences were confirmed by laboratory tests in 45 (75%) cases against which the C&ED took prosecution actions, or issued warning letters and/or safety control notices. While there was no time-barred prosecution case, the delays in meting out punishments to deter similar offences and/or issuing safety control notices to warn the public of the risks in buying/using the related products undermined consumer protection; and (ii) the long time taken in conducting test purchases, sending samples for laboratory testing and conducting raid operations had contributed to the delays. For example, in 13 (22%) cases, samples were sent for laboratory testing more than two months after test purchases but there was inadequate documentation of the justification for the long time taken in 11 cases. At present, there is no exception report generated by the C&ED's computer system to facilitate the monitoring of the delayed investigation cases (paras. 3.20 to 3.22).

Other consumer protection measures

11. ***Consumer protection measures by the CC.*** The CC handles complaints by means of conciliation. In 2016-17, the CC received 25,039 complaints and the resolution rate of pursuable cases was about 74%. In the process of complaint handling, the CC may identify from repeated complaints lodged against a trader which has adopted some undesirable trade practices. The CC may decide to publicly name and reprimand such trader(s) or disapprove such practices in a certain industry. Moreover, the CC is committed to empowering consumers to protect themselves through disseminating consumer information and organising seminar and talks

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(paras. 4.2, 4.5, 4.16 and 4.34). Audit examination of CC records has revealed the following areas for improvement:

- (a) ***Inadequacies in taking follow-up actions on complaints.*** Audit sample check of 30 complaint cases revealed that: (i) there were omissions in issuing reminder letters to traders which did not respond to the CC's inquiry letters in 3 cases and delays in issuing such reminders in another 2 cases; (ii) in 4 cases, there were inadequate follow-up actions with the traders which did not respond to the reminder letters; and (iii) in 5 cases, the complainants were only informed of the case progress more than 30 days after the traders had not responded to the reminder letters (paras. 4.9 and 4.10);
- (b) ***Inadequate monitoring of long-outstanding complaint cases.*** Audit analysis of 2,526 complaints received from January 2012 to September 2017 which were in progress as at 17 November 2017 revealed that 396 (16%) cases had been outstanding for almost three years or more. According to the CC, 289 (73%) of the 396 cases were pending supervisors' review and approval for case closure due to an error in the CC's computer system which would not affect the interest of the complainants. However, follow-up actions for the remaining 107 cases were pending (paras. 4.11 and 4.12);
- (c) ***Need to enhance the computer system to support identification of traders with repeated undesirable trade practices.*** While the CC's computer system could generate reports showing traders/industries with the highest numbers of complaints in every month, there is no analysis of whether the complaints are related to their undesirable trade practices which are one of the factors for considering naming and public reprimand action. Moreover, the lack of data mining capability of the system makes it difficult to extract other useful information such as dispute resolution rates of traders for analysis. As such, there is a risk that some serious cases of undesirable trade practices may not have been brought up by the system for considering further actions. In an analysis of the CC's computer records, Audit noted that two traders had not been brought up for considering further actions despite an increasing number of complaints against them for undesirable trade practices and the low dispute resolution rate for one of them (paras. 4.18(c) and 4.19); and

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- (d) *Need to take forward the revamp project of CHOICE magazine.* According to the CC, CHOICE magazine plays a vital role in assisting consumers to make astute choices and make purchases in a safe, informed and responsible manner. However, the sale of CHOICE magazine had dropped by 23% from an average of 27,428 copies a month in 2009-10 to 21,033 a month in 2016-17. Moreover, the online version of the magazine, which was launched in 2004, had a slow pick-up rate due to the unfriendliness of the online subscription platform. According to a consultancy review completed in 2016 and the CC's internal review in 2017, a major revamp of the magazine was deemed necessary to sustain its value to the public (paras. 4.36 to 4.38).

12. *Low usage of a voluntary mediation scheme implemented by OFCA.* To address issues of billing disputes in the telecommunications services, OFCA has implemented a voluntary mediation scheme, namely the Customer Complaint Settlement Scheme (CCSS) to help resolve billing disputes in deadlock between the telecommunications service providers and their customers. The CCSS can handle over 400 cases a year if operating in full capacity. However, the number of cases referred to the CCSS from November 2012 to October 2017 averaged only 74 cases a year, representing a utilisation rate of about 18.5%. There is a need for OFCA to make greater efforts to promote the usage of the CCSS (paras. 4.26 and 4.28).

Audit recommendations

13. **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:**

- (a) **the Commissioner of Customs and Excise and the Director-General of Communications should conduct a comprehensive review on the enforcement issues of the amended TDO (para. 2.15);**
- (b) **the Commissioner of Customs and Excise should:**
 - (i) **work with the CC to ensure the timely completion of enhancements to the computer system interface for case referral (para. 2.16);**

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- (ii) **take measures to improve the conduct of investigations by the IPIB and the timeliness in completing investigation work by the TDIB and the CPB (paras. 2.36(a) and (d), and 3.24(e));**
 - (iii) **take measures to improve complaint handling such as the processing and classification of complaints (paras. 2.36(b) and 3.24(c));**
 - (iv) **strengthen the checking of supporting records for reporting the achievement of performance targets in the COR (paras. 2.36(c) and 3.24(d)); and**
 - (v) **take measures to improve the effectiveness of spot checks by the CPB (para. 3.24(a) and (b));**
- (c) **the Director-General of Communications should review the need for sharing of unfair trade practice information with the CC and make greater efforts to promote the usage of the CCSS (paras. 2.17(a) and 4.30(a)); and**
- (d) **the CC should:**
 - (i) **tighten monitoring to ensure that complaint cases are dealt with in a timely manner (para. 4.14(e));**
 - (ii) **enhance the analytical capability of its computer system to facilitate the identification of serious and repeated cases of undesirable trade practices (para. 4.24(a)); and**
 - (iii) **continue the efforts to take forward the revamp project of CHOICE magazine (para. 4.42).**

Response from the Government and the Consumer Council

14. The Government and the CC generally agree with the audit recommendations.