

**Legislative Council Panel on Health Services
Meeting on 8 July 2002**

**Report on Public Consultation on the Proposed Legislative
Amendments to Smoking (Public Health) Ordinance (Cap. 371)**

INTRODUCTION

This paper briefs members on the outcome of the public consultation exercise on the proposed legislative amendments to Smoking (Public Health) Ordinance (Cap. 371) (the Ordinance) and findings of the public opinion surveys. The paper also highlights key findings of our appraisal of a report on the impact of smoking ban on the catering businesses conducted by KPMG, and a recent survey on tourists' perception of local smoke-free policy.

BACKGROUND

2. The consultation document entitled "Proposed Legislative Amendments to Smoking (Public Health) Ordinance (Cap. 371)" was released on 21 June 2001 for public consultation which ended on 29 September 2001. The main objectives of the proposals are to protect members of the public, particularly non-smokers, against passive smoking in public indoor premises, further control tobacco advertisement and promotion in public places, and bring about more effective enforcement of the Ordinance. A summary of the legislative proposals is at Annex A. Three public opinion surveys have also been conducted to gather further opinions of the general public on the proposals.

PUBLIC CONSULTATION

Meetings with Stakeholder Groups

3. During the consultation period, we attended meetings with the following key stakeholder groups to seek their views on our proposals:

- Catering industry associations
- Chambers of commerce
- The Hong Kong Newspaper Dealers Association
- Political parties and LegCo members
- District Councils
- The Women's Commission
- The Consumer Council
- The tobacco industry and companies

Written Submissions

4. During the consultation period, we received over 10,000 written submissions and more than 200,000 signatures from different sectors of the community. About 98% of the signatures were supportive of one or more of our proposals. For the remaining 2%, they mainly opposed our proposals to implement a total smoking ban in catering venues and further tighten the control over tobacco advertisement and promotion. A breakdown of the written submissions by category of key stakeholder groups is shown below (Table 1):

Table 1: Number of written submissions received

Categories	No. of written submissions received
General public	800
Community organizations	18
Health care professionals and tobacco control advocates	22
Catering industry	12
Chambers of commerce	9
Political parties and District Council members	6
Schools, universities, parents and students	9,238
Tobacco industry and companies	5
Total	10,110

Analysis of Comments

5. The feedback collected from the written submissions received and the meetings we attended during the consultation period have been collated and analyzed and are presented in paragraphs 6 to 19 below.

A. Expansion of Statutory No Smoking Areas

Restaurants and Other Public Indoor Premises

6. The vast majority of the general public, and most sectors of the community, including community organizations, health care professionals and tobacco control advocates, supported the proposed smoking ban in all restaurants. In-principle support was also obtained from most political parties and District Councils.

7. The strongest opposition came from the catering industry. The industry, in particular restaurant/bar/karaoke owners associations, opined that such a ban would have negative impact on their businesses. They also opposed seeking venue management to enforce the law. The catering workers associations were worried that undue burden would be imposed on them if they were to be the primary enforcement agency. Notwithstanding these oppositions, some associations either supported or did not object to the proposed smoking ban which, in their view, would be easier to enforce and reduce potential conflict between smoking and non-smoking customers.

8. The proposed smoking ban in bars and karaoke establishments received mixed views from the general public and strong opposition from the catering industry, and various sectors of the community had reservations about the proposal. Those who opposed or expressed reservations opined that the clientele of these establishments were mainly smokers and they worried that the proposal would drive away smoking customers and thus affect severely the revenues of these establishments. They suggested that greater flexibility should be exercised and a longer grace period should be granted for them.

Schools, Universities and Tertiary Institutions

9. Almost all responses supported the proposal to ban smoking in educational institutions.

Indoor Workplaces

10. The vast majority of the general public, and most of the submissions from various sectors, including those from chambers of commerce, were supportive of the proposal to prohibit smoking in indoor workplaces. Some even suggested extending the scope of the smoking ban to areas such as bus terminals, covered walkways, etc.

11. The tobacco industry however objected to the proposal. They opined that the choice and rights of smokers should be respected, and the proposal to ban smoking would neither be practical nor enforceable. They counter-proposed allowing employers to decide on the smoking policy in the workplaces, and allowing the setting up of separately ventilated smoking rooms. Some other submissions also suggested exploring smoking room as an option.

B. Advertisement and Promotion of Tobacco Products

Display of Tobacco Advertisement

12. The views on the proposal to revoke the current exemption on the display of tobacco advertisement at licensed hawker stalls and small retail outlets were mixed. While most of the general public supported the proposal, political parties and District Councils expressed reservations, and newspaper hawkers and retailers objected to the proposal. Their reservations or objections were mainly on the ground that the livelihood of the hawkers and small retailers might be adversely affected for they would be losing the income generated from displaying tobacco advertisements at their stalls or outlets. The tobacco industry also objected to the proposal. They opined that, apart from the reason of livelihood, the proposal would also interfere with their right to communicate with their consumers. They counter-proposed to standardize the size of advertisements to certain size and restrict their placement.

Price Board and Price Marker

13. The proposal to prescribe the sizes of price board and price marker and the font size of the words printed thereon was not widely discussed by the community. Nevertheless, almost all who commented on it, including the tobacco industry, supported the proposal. Some submissions proposed that the style and colour of price board and price marker could also be prescribed to standardize the presentations.

Sale of Tobacco Products in Association with Other Products

14. The proposal to prohibit the sale of tobacco products in association with other products, though not widely discussed, was generally supported by those who commented on it, except the tobacco industry and companies which expressed their concern that such a ban would hinder them from communicating with current customers to retain their loyalty to the product and encouraging smokers to switch brands.

Tobacco Sponsorship

15. The majority of the responses from different sectors of the community welcomed the proposal to further restrict tobacco sponsorship. They however raised the concern that there would still be a loophole in the legislation for tobacco companies would continue their sponsorship by stretching the brand names of tobacco products to some other non-tobacco merchandises. Some event organizers worried that in the current economic climate, it would be difficult to seek alternative sponsorships should further restrictions be imposed. The tobacco industry, though supported the proposal, were in particular concerned about whether ‘corporate sponsorship’ would be allowed.

C. Health Warning on Tobacco Products

16. The majority of the general public, community organizations, political parties, District Councils, health care professionals and tobacco control advocates supported the introduction of pictorial/graphic health warnings.

17. The tobacco industry and companies however strongly objected to the proposal. They expressed their concern that the introduction of pictorial or oversized health warnings would interfere with their communication with adult consumers. They also opined that the health warnings would destroy the distinctiveness and function of their trademarks by making product packages appear generic and not readily distinguishable from other competitive products, and hence may violate their rights under the intellectual property laws and other relevant treaties.

D. Law Enforcement

18. The community at large welcomed the proposal to bring about more effective enforcement of the legislation, and most of them supported authorizing staff of the Tobacco Control Office to initiate prosecution actions against certain offences under the Ordinance.

19. Nevertheless, the community generally cast doubt on the enforceability of the smoking ban and the practicability and effectiveness of empowering the management of the no smoking premises to act as the primary enforcement agency, for the management might not be willing, or are not well-trained, to enforce the smoking ban. In particular, the catering industry was very concerned about taking up the role of the primary enforcement agency. They were worried that such a proposal

would impose undue burden on frontline staff for they might confront with smoking customers when enforcing the law. They opined that government departments should take up a more proactive role in enforcing the law. Some responses suggested the Government to set up a patrolling team to inspect no smoking areas, and provide the necessary assistance or training to the management of the no smoking premises.

PUBLIC OPINION SURVEYS

20. To gauge public views on various legislative proposals, three public opinion surveys were commissioned in July 2001, November 2001 and January 2002. Some 1,000 respondents were interviewed successfully in each survey. Below are the key findings of the three surveys:

- (a) The majority of the respondents (82%, 73% and 76%) in all three surveys supported the proposal to prohibit smoking in all restaurants.
- (b) Opinions on prohibiting smoking in bars and karaoke establishments were diverse. The latest survey conducted in January 2002 indicated that 50% of the respondents supported a ban in karaoke establishments and 20% did not, while 38% supported a ban in bars and 28% did not.
- (c) Each survey showed that the vast majority of the respondents (about 98%) supported the proposed smoking ban in all kindergartens, primary and secondary schools, while 88% to 93% agreed or strongly agreed with a ban for indoor premises of universities and tertiary institutions.
- (d) Most of the respondents (86% to 88%) supported prohibiting smoking in all indoor workplaces.
- (e) Over half of the respondents (52% to 62%) in all three surveys agreed with the proposal to forbid the display of tobacco advertisement at licensed hawker stalls and retail outlets, while 15% to 17% did not.
- (f) Over 50% of the respondents in each survey supported prohibiting the sale of a tobacco product in association with any other merchandize, while about 19% did not.
- (g) Opinions on prohibiting the use of sponsorship as a means for

tobacco advertisement were diverse. While 43% to 47% of the respondents supported the proposal, 27% to 29% did not.

- (h) The majority of the respondents (74% to 80%) supported introducing health warnings with pictorial and graphic contents on tobacco product packages.
- (i) The surveys indicated that there was a preference among the respondents for smoke-free restaurants. When they were asked to choose between two identical restaurants of which one was smoke-free and the other allowed smoking, most of them (75%) chose the smoke-free one.
- (j) The majority (82% to 83%) of the respondents agreed that the proposal to prohibit smoking in all restaurants could help protect public health.
- (k) The majority (91% to 93%) of the respondents agreed that smoking was hazardous to health. About the same number, 92% to 94%, agreed that passive smoking was hazardous to health.

21. Graphical presentations of the findings of the public opinion surveys are at Annex B.

STUDIES ON EFFECTS OF SMOKING BAN ON CATERING INDUSTRY

Background

22. The Hong Kong Catering Industry Association commissioned KPMG to research the possible trade impacts of a smoking ban on the hospitality trade, and released in September 2001 a report entitled "Proposed smoking ban: impacts on Hong Kong hospitality businesses" (the KPMG report). The report estimated that there would be a loss of \$7.9 billion in catering receipts and 21,500 in jobs resulting from a smoking ban in catering venues.

23. To ascertain the validity of the projection made in the KPMG report, we have asked the Department of Community Medicine of the University of Hong Kong to conduct an appraisal of the report.

Key findings of the critical appraisal

24. The appraisal identified a number of biases and problems of the KPMG report. The major ones are highlighted below:

(a) The KPMG report is flawed in its methods in conducting the study. It obtained samples by interviewing customers at catering venues. This sampling method led to over-sampling of frequent visitors and exclusion of those who did not currently visit the venues (perhaps to avoid smoky atmosphere), but might go after the smoking ban, and resulted in excessively negative findings on the impact of smoke-free policies on catering venues.

(b) The KPMG report estimates a much higher spending on eating and drinking out (\$1,426 per week per person) than the published statistical data in the Household Expenditure Survey (an average of \$434 per week per person). Such significant over-estimation of average spending on dining/drinking out is attributable to the over-sampling of customers in restaurants and bars as stated in paragraph 24(a).

25. The appraisal report concluded that there are fundamental flaws in the KPMG report in terms of its methodology and its conclusion. As such, it provides an inadequate basis for assessing the impact of smoking-free policies on catering venues.

26. Based on the data gathered from the three public opinion surveys commissioned by the Health, Welfare and Food Bureau, which comprise a representative sample of the population of Hong Kong, respondents place a high value on smoke-free catering venues and a smoking ban is likely to increase their patronage of the catering trades, particularly to restaurants and cafes. It is estimated that there could be a net gain of over 5% for the catering business, or \$4 billion in dollar terms which is equivalent to about 11,000 direct jobs. Besides, the latest survey also found that the public are willing to pay more for smoke-free dining, as a large proportion of the respondents (40%) had indicated that they would be willing to pay \$23 more on average for a smoke-free \$100 meal.

STUDIES ON EFFECT OF SMOKING BAN ON TOURISM

Background

27. In addition to the catering industry, we are also concerned about the possible impact of our legislative proposals on the tourist business. To objectively assess the impact, we commissioned a survey from 28 February to 13 March 2002 to study the influence of introducing smoke-free policy on the intentions of inbound tourists to visit Hong Kong and patronize catering venue.

28. A total of 4,621 visitors were interviewed at various immigration control points, such as the Hong Kong International Airport, China Ferry Terminal in Tsim Sha Tsui and Kowloon-Canton Railway Hung Hom Station. The sample matched closely with the data from the Hong Kong Tourism Board and it was subsequently weight adjusted to represent all visitors to Hong Kong.

Key findings of the survey

29. The survey result showed that with the introduction of smoke-free policy, 30% of the respondents said they would come to Hong Kong more, 66% said it would have no effect on them, and 4% said they would come less frequently. Meanwhile, if smoke-free policy is to be introduced to catering venues, spending by tourists in those venues is expected to increase from 12% to 25%, with an average of 19%, which translates into an additional revenue of up to HK\$2 billion per year for Hong Kong.

WAY FORWARD

30. We shall refine our legislative proposals taking into account the feedback from the public and findings of the related studies, and report back to the LegCo Health Services Panel our recommended way forward towards the end of this year.

31. Members are requested to note the content of this paper.

Annex A

**Summary of the Proposed Legislative Amendments to
Smoking (Public Health) Ordinance (Cap. 371)**

Expansion of Statutory No Smoking Areas

1. To prohibit smoking in all restaurants, bars and karaoke establishments. Consideration will be given to granting a longer grace period to bars and karaoke establishments if deemed necessary.
2. To prohibit smoking in both indoor and outdoor areas of all kindergartens, primary and secondary schools, and in indoor premises of universities and tertiary institutions.
3. To prohibit smoking in all indoor workplaces, except domestic premises where the only employees are domestic servants, places where only self-employed people work, and certain licensed premises including bathhouses, nightclubs and mahjong places. Consideration will be given to granting a longer grace period to businesses that have genuine difficulty in complying with the smoking ban requirement.

B. Advertisement and Promotion of Tobacco Products

1. To revoke the current exemption on the display of tobacco advertisement at licensed hawker stalls and retail outlets employing not more than 2 employees.
2. To prescribe the sizes of price board and price marker to not larger than 1,500 cm² and 50 cm² respectively, and the font size of the words printed thereon.
3. To prohibit the sale of a tobacco product in association with any other merchandise, regardless of whether it is charged or not.

4. To prohibit the brand name of any tobacco product, and any words in association with “tobacco” to be used in any sponsored event, irrespective of whether it is used in association with a non-tobacco product. The appearance of such brand name is only allowed if it is clearly stipulated to be a non-tobacco merchandise and no reference is made to tobacco products.

C. Health Warning on Tobacco Products

1. To introduce an enabling provision in the Ordinance allowing health warnings on tobacco products to contain pictorial and graphic contents.

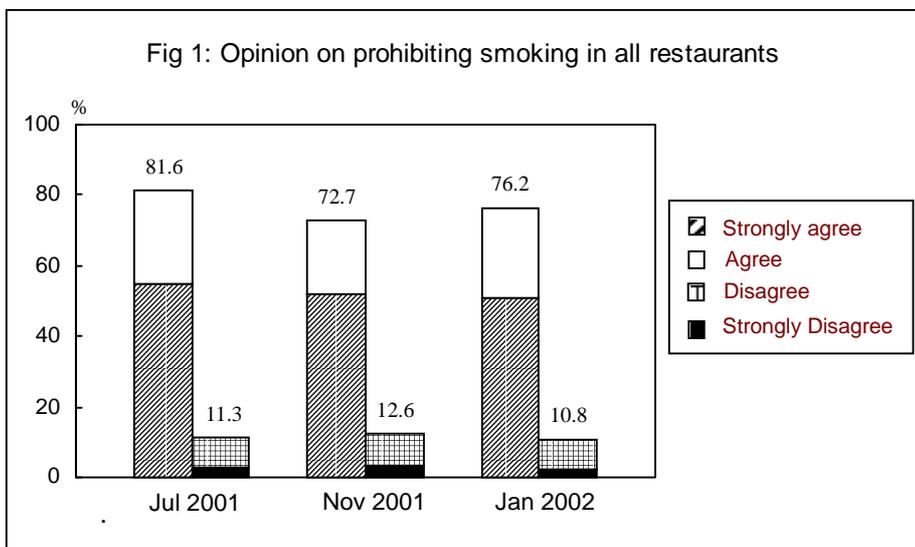
D. Law Enforcement

1. To authorise public officers, in particular staff of the Tobacco Control Office, to initiate prosecution action against offences including failure to display no smoking signs in no smoking areas, and illegal sale, advertisement and promotion of tobacco products. Also to continue authorising managers of no smoking areas, such as restaurants and shopping malls, to enforce the smoking ban in their premises, and confer similar power upon school principals and managers of indoor workplaces.

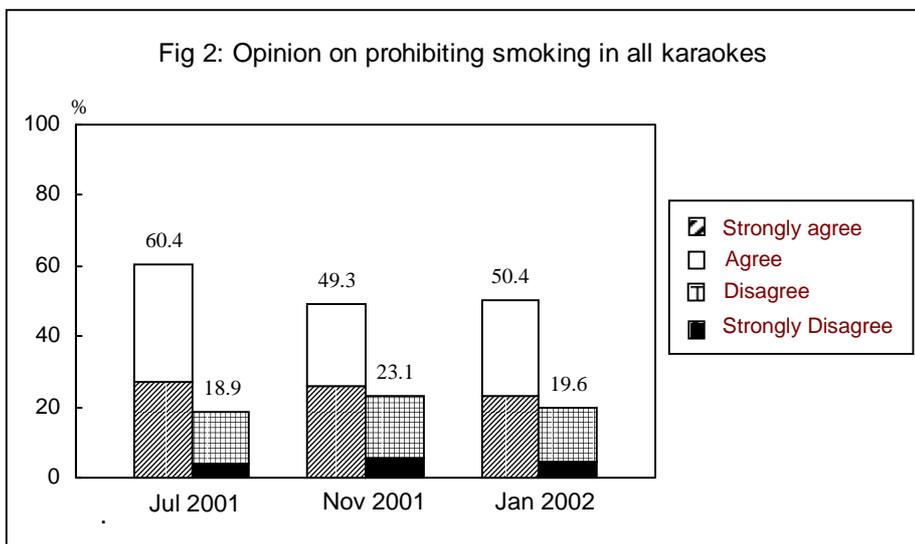
Public Opinion Surveys on the Proposed Legislative Amendments to Smoking (Public Health) Ordinance (Cap. 371)

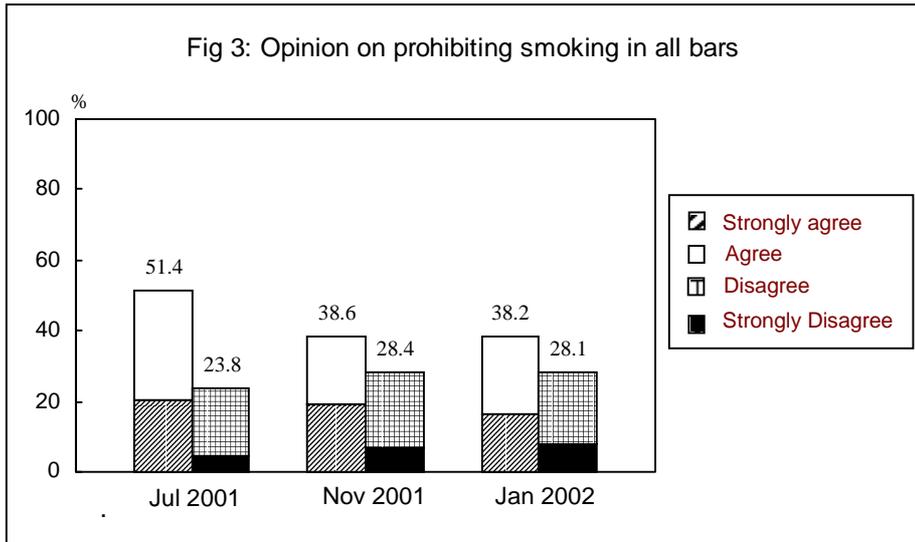
A. Expansion of Statutory No Smoking Areas

(a) The majority of the respondents (82%, 73% and 76%) in all three surveys agreed or strongly agreed with the proposal to prohibit smoking in all restaurants (Fig. 1).

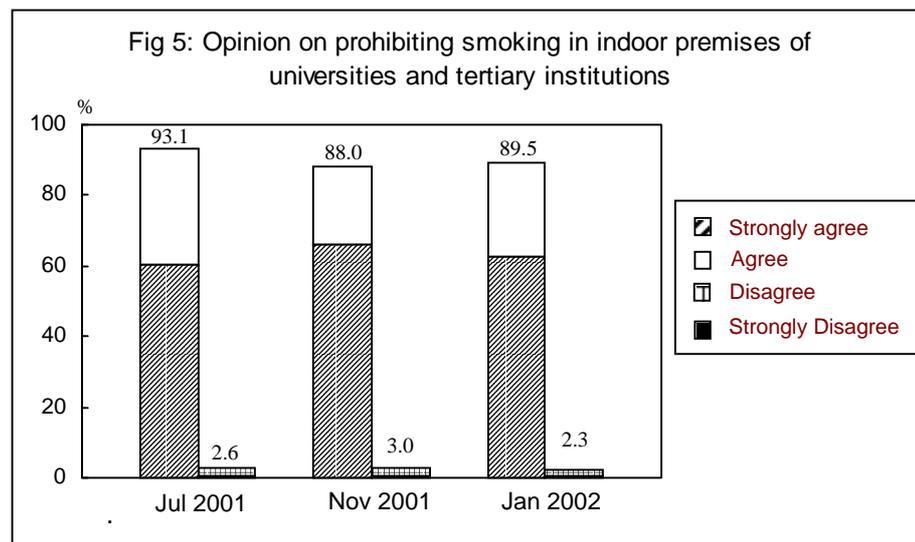
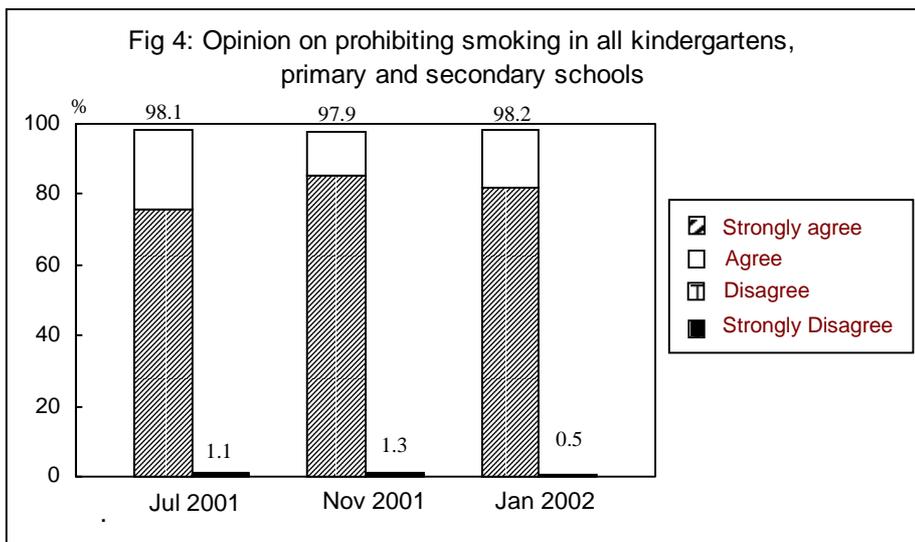


(b) The latest survey conducted in January 2002 indicated that 50% of the respondents supported a ban in karaoke establishments and 20% did not, while 38% supported a ban in bars and 28% did not (Fig. 2 and Fig. 3).

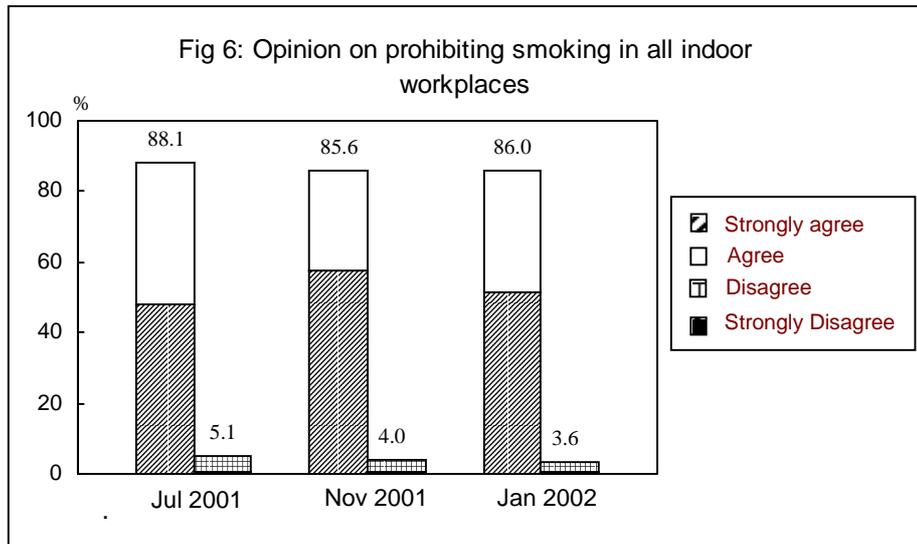




(c) Each survey showed that the vast majority of the respondents (about 98%) agreed or strongly agreed with the proposed smoking ban in all kindergartens, primary and secondary schools (Fig. 4), while 88% to 93% agreed or strongly agreed with a ban for indoor premises of universities and tertiary institutions (Fig. 5).

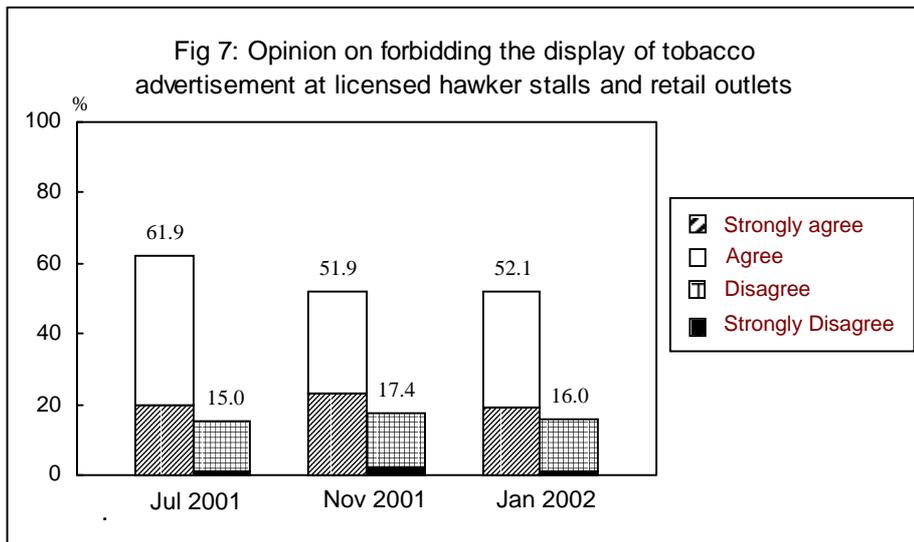


(d) In each survey, 86% to 88% of the respondents supported prohibiting smoking in all indoor workplaces (Fig. 6).

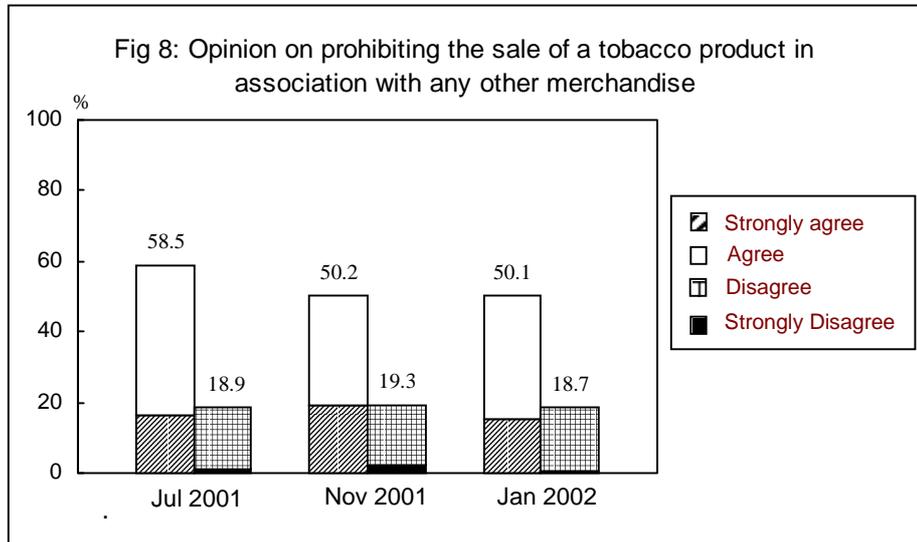


B. Advertisement and Promotion of Tobacco Products

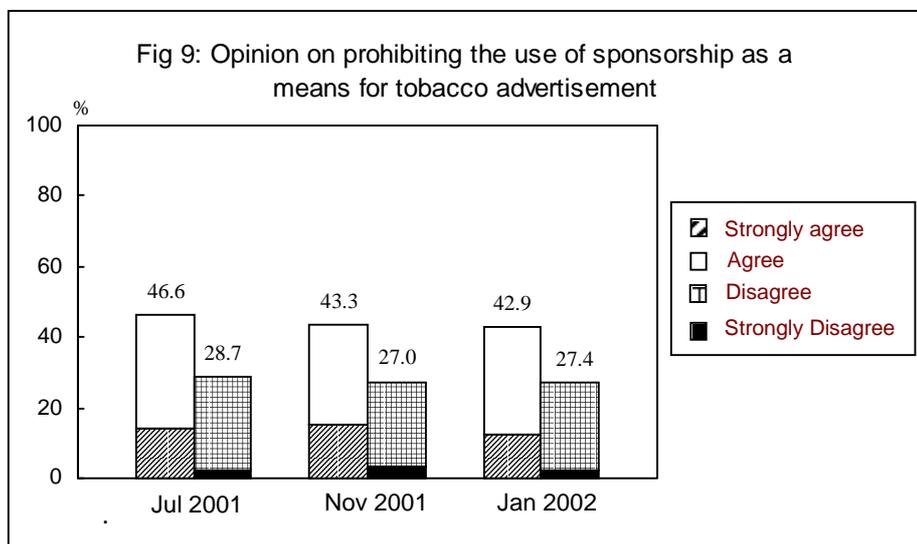
(a) Over half of the respondents (52% to 62%) in each of the surveys agreed or strongly agreed with the proposal to forbid display of tobacco advertisements at licensed hawker stalls and small retail outlets, while 15% to 17% disagreed or strongly disagreed (Fig. 7).



(b) Over 50% of the respondents in each survey supported prohibiting the sale of a tobacco product in association with any other merchandise, while about 19% disagreed or strongly disagreed (Fig. 8).

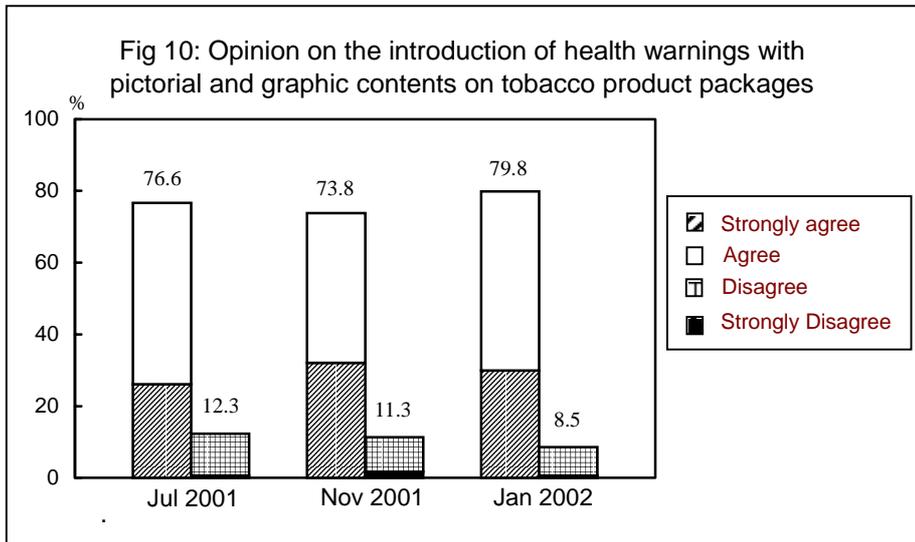


(c) About 43% to 47% of the respondents agreed or strongly agreed that the use of sponsorship as a means for tobacco advertising should be forbidden, while 27% to 29% disagreed or strongly disagreed (Fig. 9).



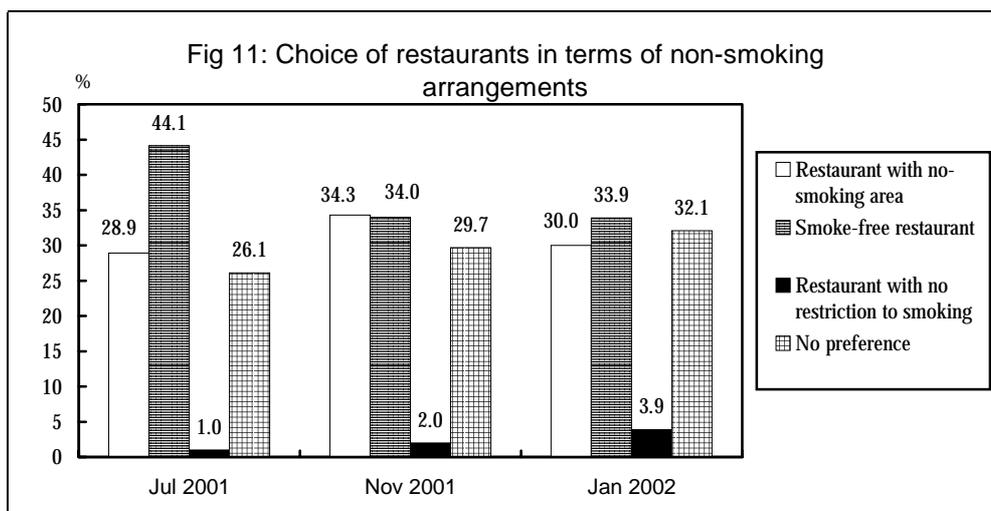
C. Health Warning on Tobacco Products

(a) A majority of the respondents in the three surveys (74% to 80%) supported the introduction of health warnings with pictorial and graphic contents on tobacco product packages (Fig. 10).

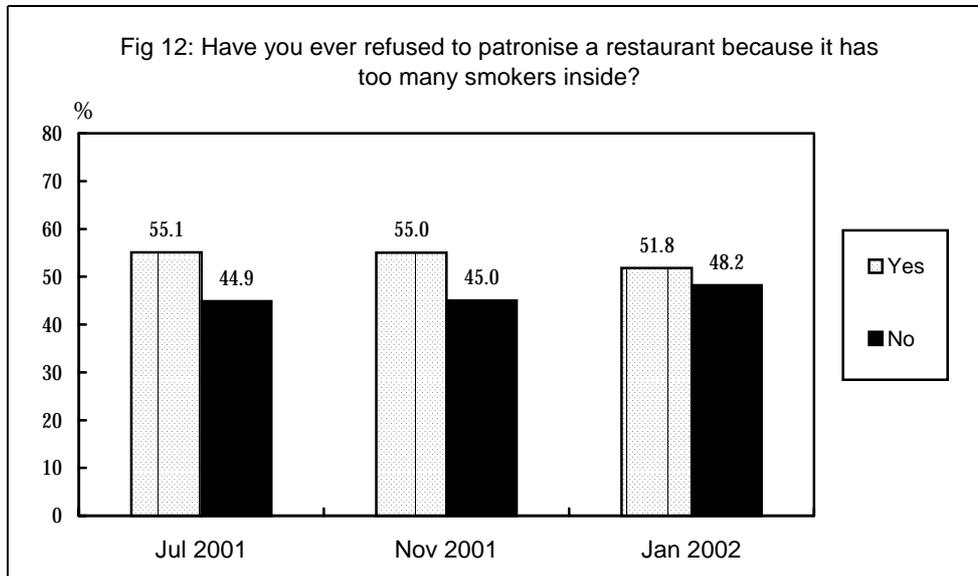


D. Choice of Restaurants

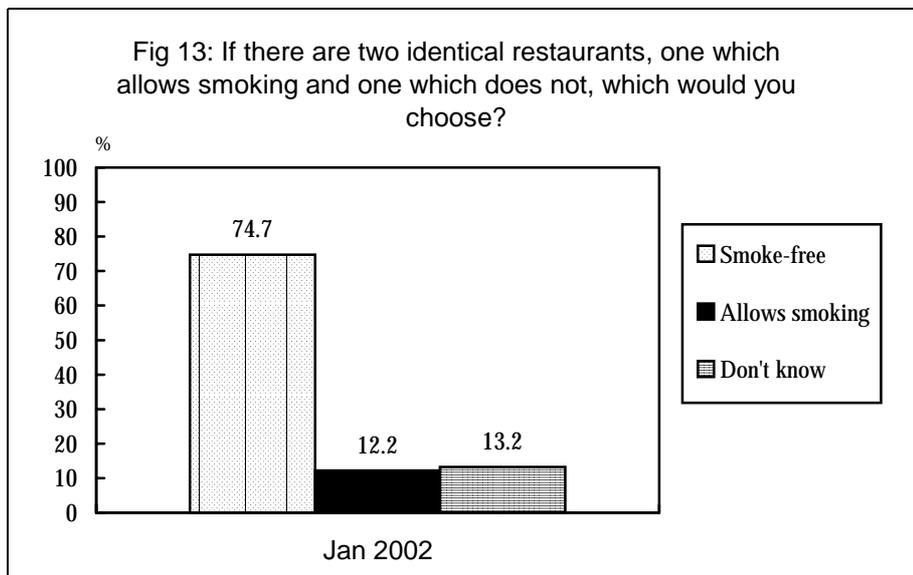
(a) When choosing restaurants in terms of the non-smoking arrangement, 34% to 44% of the respondents said that they would choose an entirely smoke-free restaurant, while 29% to 34% would choose one with a smoke-free area (Fig. 11).



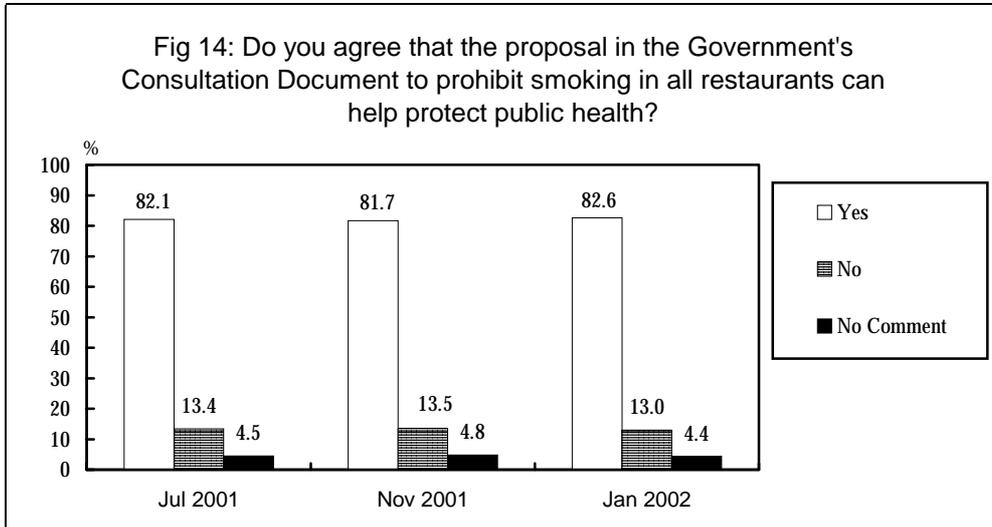
(b) Over half (52% to 55%) of the respondents had refused to patronize a restaurant because it had too many smokers inside (Fig. 12).



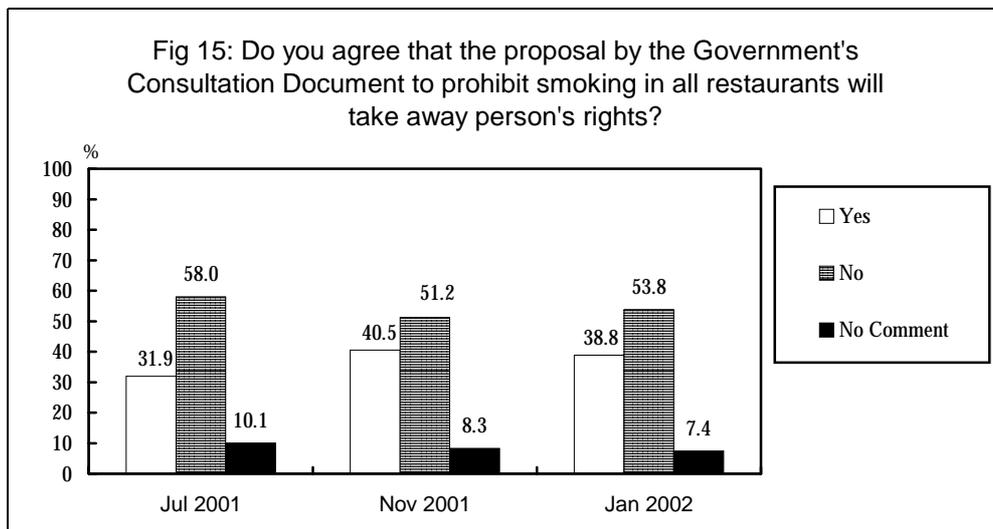
(c) A new question was introduced in the latest survey conducted in January 2002. The question asked the respondents to choose between two identical restaurants of which one was smoke-free and the other allowed smoking. Most of the respondents (75%) said they would choose the smoke-free restaurant (Fig. 13)



(d) The majority (82% to 83%) of the respondents believed that the Government's proposal to prohibit smoking could help protect public health (Fig. 14).



(e) Over half (51% to 58%) of the respondents in the surveys believed that the Government's proposal to prohibit smoking in restaurants would not take away a person's rights while 32% to 41% believed it would (Fig. 15).



(f) The vast majority (91% to 93%) of the respondents agreed or strongly agreed that smoking was hazardous to health (Fig. 16). About the same number, 92% to 94% of the respondents agreed or strongly agreed that passive smoking was hazardous to health (Fig. 17).

