

The Challenge of Institutional Integrity in Responsive Regulation: Field Inspections by the Australian Taxation Office

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Based on responsive regulation, the Australian Taxation Office (ATO) Compliance Model was developed as a way of dealing with the complexities of the Australian tax system. This article demonstrates some of the challenges that come with introducing responsive regulation into a bureaucracy such as the ATO. Selznick's ideas of institutional integrity provide a conceptual framework that allows the regulatory agency engaged in responsive regulation to emphasize voluntary compliance and the building of positive relationships with the regulatee, while simultaneously ensuring that non-compliance is both detected and dealt with. Using evidence from a qualitative study of ATO "walk-ins" with used car dealers, the article demonstrates the unintended consequences that can occur without institutional integrity both at the level of design and at the level of everyday ATO field-officer practices.

I. INTRODUCTION

Two people walk into a small business, say a car yard (i.e., dealership) and ask to speak to the manager. Once speaking to the manager, they identify themselves as being from the Australian Taxation Office (ATO) and as conducting a registration check.¹ The manager may ask to see their ID, may ask them to sit down, or may keep them standing out in the yard. A simple checklist of unambiguous questions is asked, and it is explained that later the answers will be checked with information on the ATO "system." The questions asked cover registration details of the business, including whether or not the client is registered for GST (Goods and Services Tax), whether lodgement of the Business Activity Statement is up to date, the number of employees, and whether they are registered for PAYG (Pay As You Go). Perhaps some polite conversation ensues before the ATO field officers are on their way to conduct another "walk-in." The whole process

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may take just a few minutes. At the end of the day, the field officer takes the collected information back to the tax office, where it is checked against information in the ATO system. If the field officer finds out that the information collected during the walk-in does not match what is on the ATO system, the case will be “escalated” for further action.

In this article, I examine “walk-ins” to used car yards as a case study of interactions between the Australian Taxation Office and small business. Examining how field officers understand the walk-in and how regulatees, in this case used car dealers, respond, I use the lens of institutional integrity (Selznick 1992) to interpret these visits within the broader framework of responsive regulation.

A. THE ATO COMPLIANCE MODEL

As described in Braithwaite (2007) the ATO Compliance Model has been developed as a means of dealing effectively with the complexities involved in managing contemporary tax systems. Whereas the ATO used to have a confrontational approach that relied almost exclusively on audit and prosecution, the Compliance Model draws from Ayres and Braithwaite’s (1992) model of responsive regulation, the idea being that ensuring voluntary compliance is more effective as well as being a more efficient use of ATO resources. If the ATO can encourage the majority of taxpayers to comply, then less effort is needed to deal with non-compliance.

Although prosecution can be used punitively against the worst non-compliers, the main purpose of prosecution within a framework of responsive regulation is to act as a deterrent. According to deterrence theory, tax compliance is positively correlated with the strength of a taxpayers’ belief that non-compliance will be detected and punished (Lewis 1982). In other words, if taxpayers believe that non-compliance will lead to prosecution, they will more likely comply voluntarily.

The threat of prosecution is not the only way of ensuring voluntary compliance. Tax morale (Frey 1997) refers to the intrinsic motivation that people have to voluntarily pay tax (Torgler 2003). The literature suggests that factors that affect tax morale include trust and confidence in the tax system (Murphy 2002; Sparrow 1994), including perceptions that the system is fair (Murphy 2003; Taylor 2003). Taxpayers assess the fairness of the tax office in both relative terms, that is, the share of tax they pay compared to others (Wenzel 2004), and in procedural terms, that is, whether they are treated respectfully, impartially, and responsively by the ATO (Braithwaite & Reinhart 2000). The Taxpayers’ Charter has been developed to ensure that the ATO is procedurally fair, and is seen as such (Australia. Australian Taxation Office 2003). Perceptions of relative fairness depend upon a conviction that the tax laws are fair as well as a belief that other people are not getting away with not meeting their tax obligations. In sum then, three key factors in ensuring tax compliance are: fear of the law, the desire to do the

right thing, and perceptions that the ATO has the power to enforce compliance (Braithwaite 2003). In essence the ATO Compliance Model comprises assessing options for turning non-compliance into voluntary compliance (Braithwaite & Job 2003) through responsive regulation.

The approach of the ATO Compliance Model is distilled in Braithwaite's statement that, "the challenge for tax administrators is to play a two-handed game: To deal with the wrongdoing today, while nurturing consent for tomorrow" (2003: 35). Care needs to be taken in doing this; the "compliance trap" (Parker 2006) lurks. This trap comprises the twin perils of either "going soft" to avoid conflict or, on the other hand, being too tough; in the case of the ATO, being too tough signals a return to the culture of prosecution and audit.

B. NEED FOR INSTITUTIONAL INTEGRITY

Selznick's (1992) writings on the integrity of public institutions provide some guidance as to how to navigate around the "compliance trap," such that the emphasis can be on voluntary compliance and building positive relationships between regulator and regulatee, while simultaneously ensuring that non-compliance is both detected and dealt with. A precise definition of institutional integrity is difficult to achieve. According to Selznick, what constitutes integrity varies according to the nature of the institution, but involves appropriate ends and means, and "principled conduct" rather than "mechanical or mindless following of rules or procedures, without regards for purposes and effects" (1992: 330). Selznick describes process as richer than procedure and something that cannot be "reduced to a specific set of forms or rules" (*ibid.*: 286). "It contains the whole matrix of values, purposes and sensibilities that should inform a course of conduct . . . process requires the integration of means and ends" (*ibid.*: 333). This can be a challenge for regulatory agencies, as process requires more sophisticated skills than mere procedure. It also removes the legal safety net that adherence to strict procedure can appear to provide.

In the case of the ATO, the desired "ends" are the collection of all due taxes, or to put it another way, fully compliant taxpayers. In broad terms the means to achieve this is the ATO Compliance Model, a form of responsive regulation. At the level of everyday practices, integrity manifests in principled conduct. This extends beyond how regulators treat regulatees (e.g., as outlined in the Taxpayers' Charter) to include how effectively the regulators do their job. A corollary of this is that the actions of regulators should make sense to regulatees.

II. METHODOLOGY

Whereas most studies on tax compliance have involved the self-reporting of behavior—in the form of interviews, focus groups, or large-scale surveys—this

study includes dynamic observations of the interactions between the tax office and taxpayers. The method employed was a mixture of direct observation and semi-structured interview.

Over a period of three months between March and May in 2004, as a researcher I accompanied four individual ATO field officers from a regional office on thirty-three attempted walk-ins. Three of these businesses had closed down, and there was no visit to another because the field officer deemed it too large for a walk-in to be appropriate. Hence, I observed twenty-nine interactions between used car dealers and ATO field officers and twenty-one walk-ins actually conducted. I traveled with the field officers to and from the walk-ins, which enabled me to get a sense of their opinion about each visit. In addition, I conducted formal interviews with these field officers, as well as with four field officers from another office and with three other ATO non-field staff.

The field officers whom I accompanied had been very concerned before they went out into the field that the car dealers would object to my presence and that it would be difficult for them to conduct the walk-in. However, none of the dealers objected to my being there and the field officers considered that my presence made no difference to the conduct of the walk-in. One field officer even thought that the dealers were happy to have me there as a neutral observer. I was able to re-interview eighteen of the twenty-one used car dealers who I witnessed experiencing a walk-in. Most of the return interviews were conducted one or two weeks after the walk-in, which was likely to be before the dealer would be aware of any follow-up action taken as a result of the walk-in.

There are several limitations to this study. The fleeting nature of the walk-in and the fact that walk-ins were conducted in fairly quick succession made it difficult to take notes that were an adequate record for later analysis. Ideally, one would have an audio-visual record that could be watched repeatedly to closely observe the dynamics between tax officer and taxpayer. (Of course, quite apart from any privacy concerns, the recording of such footage would likely impact on the behavior of both tax officer and taxpayer.)

Initially the follow-up interviews with dealers were recorded and subsequently transcribed. However, after two requests not to turn on the recorder, I decided that interviewees might be more forthcoming if they were not recorded. It is likely that those dealers who thought that I was associated with the ATO were constrained in their conversation with me. The first time they met me was with an ATO field officer in the context of a walk-in, and even though I stressed that I was not from the ATO, interviewees seemed to find this difficult to accept fully. During the follow-up interviews, several interviewees repeatedly glanced down at my business card as if to check that I was not from the ATO.

In discussing the findings, I have not always reported the exact numbers of interviewees making certain points, so as not to give a precision to the

results that could be quite misleading. For a small qualitative study like this, the numbers of interviewees making certain points is generally of less significance than the nature of the points made. Also, in keeping with the grounded approach taken to the study, I have woven the relevant literature into my discussion of the data.

III. THE ANALYSIS OF THE WALK-IN

A. THE WALK-IN

In this article, the walk-in is used as a window onto interactions between the ATO and small business. In ATO-speak, the walk-in is a “compliance product,” one of a range of measures intended to improve compliance. Unofficially referred to by one ATO middle manager as a “sniff,” the official name for a walk-in is “unannounced registration integrity check” (URIC). According to the written procedures available to field officers, its purpose is to ensure registration integrity across a broad range of clients and industries, as well as to show the community that the ATO “has a presence in the business environment and is concerned about these types of issues.”² The walk-in is also intended as a way of detecting non-compliance. On the face of it, walk-ins clearly fit with the ATO Compliance Model of responsive regulation. The aim of the walk-in is to deter and detect non-compliance, and to boost tax morale through educating about obligations and having a visible presence. The ATO wishes to show both those who are “doing the right thing” and those who are “doing the wrong thing” that it is on the lookout for those “doing the wrong thing.”

Walk-ins are not a response to individual taxpayers, but to ATO intelligence on industries that are non-compliant. These industries then become targeted for extra attention by the ATO. Motor-vehicle retailing was named in the ATO 2003/2004 Compliance Program as a high-risk industry in the cash economy and hence to be subject to ATO focus, including unannounced “walk-in” registration visits. The individual businesses that are walked-in on are fairly randomly selected from within the industries targeted for attention.

Although the field officers know that the industry in which they are conducting the walk-in has been chosen because it participates in the cash economy, they have no information about a taxpayer at the time of the walk-in; a used car dealer could be compliant or non-compliant. Non-compliance could be wilful (such as deliberately concealing income or overstating deductions), or the result of ignorance of obligations under tax law (McKerchar 1995). If an ATO officer knew the compliance status of the used car dealer they could respond accordingly during the walk-in. For example, they could make it easier for compliant dealers to comply, educate those who are non-compliant through ignorance, and “escalate” those who are wilfully non-compliant. However, field officers do not have this information

on compliance status when they conduct the walk-in; the ATO may never get accurate information on this. Across all industries, approximately one-third of walk-ins are “escalated” to a higher level of intervention; the proportion of walk-ins to used car yards that are escalated is much greater.³ For example, one field officer in this study had escalated about half of the walk-ins in which he had been involved.

Hence walk-ins have a dual nature, common to regulatory field work (Bardach & Kagan 1982; Hawkins 1984; Muir 1977). As well as having the purpose of ensuring voluntary compliance, the walk-in is also intended as a way of detecting non-compliance. Walk-ins are just a registration check but, at the same time, field officers have to have their eyes and ears open for any indications that the dealer is not fully compliant. This means that although field officers may seem to be getting information via simple questions, they may also be engaged in covert collection of additional information via their senses. Field officers have to work out ways of managing this dual purpose. They do not want to fail to detect non-compliance and they do not want to alienate the taxpayer. Sparrow neatly summarizes the conflicting demands often faced by regulators: “be less intrusive—but more effective; be kinder and gentler—but don’t let the bastards get away with anything; focus your efforts—but be consistent; process things quicker—and be more careful next time; deal with important issues—but do not stray outside your statutory authority; be more responsive to the regulated community—but do not get captured by ‘industry’” (2000: 17).

In a study on pollution control field staff, Hawkins (1984) found that these staff managed conflicting demands in field inspections through the combined techniques or strategies of “know your district,” “be suspicious,” and “cover yourself.” In the case of ATO field officers, it will be shown that the strategies used in walk-ins could be summarized as “be friendly,” “be suspicious,” and “cover yourself.” However, “covering oneself” as an ATO field officer had very different implications to “covering oneself” as a pollution field officer. The pollution field officers “covered themselves” by being more likely to detect non-compliance, whereas ATO officers “covered themselves” by sticking to written procedures. In the context described by Hawkins, the strategies of “know your district,” “be suspicious,” and “cover yourself” were complementary. As will be shown, for ATO field officers conducting walk-ins, the strategies of “be friendly,” “be suspicious,” and “cover yourself” were in uneasy tension with one another.

B. FIELD OFFICER STRATEGIES

1. *Be Friendly*

With regard to ensuring voluntary compliance, some field officers thought that the walk-in was helpful to taxpayers as it not only ensured that their details on the ATO system were correct, it also showed them “the friendly

face of the ATO.” Most field officers considered that their approach to the walk-in was friendly and half of the field officers mentioned that their purpose was to build a relationship between the taxpayer and the ATO during the walk-in. This phrase, “building a relationship”, was used frequently by field officers as if its meaning was self-evident. It appears that this was partly a case of “talking the talk.” The foreword to the Taxpayers’ Charter states that the Charter “outlines the relationship (the ATO) seeks with the community” and the Charter itself then goes on to describe this relationship (Australia. Australian Taxation Office 2003). All field officers were familiar with the Taxpayers’ Charter; according to one of the ATO managers, “all ATO officers live and breathe the Taxpayers’ Charter.”

The phrase “building a relationship” was also used partly in expectation that the visit would change and improve taxpayers’ attitude towards the ATO. Field officers considered that “walk-ins are a way of connecting with people;” as if they were saying, “we’re here to check but we’re here to help.” Any non-compliance detected in the walk-in (e.g., non-registration for Pay as You Go tax) was framed in positive terms for the taxpayer with comments such as the following: “If the information is not right, we can fix it and better service the taxpayer.” The emphasis that all field officers placed on being friendly suggested that they were actively trying to distance themselves from the old ATO culture of confrontation.

The ATO has to walk a fine line between being friendly and helpful and not being “soft.” Officers were aware that they were not just conducting the walk-in to be helpful to the taxpayer, but were also there to detect non-compliance. One officer, conscious of this dual nature of the walk-in considered that “it is important not to be too friendly because at some stage you may need to ask awkward questions. . . . If you are too friendly, then it is very difficult to ask the hard questions later if you need to.” ATO field officers not only have to detect non-compliance, but in the event non-compliance is detected, they also need to assess whether the non-compliance is wilful or the result of ignorance: “You need to be open-minded when someone makes a mistake so you are trying to work out if a mistake is genuine or not” (ATO field officer). Field officers were explicit about giving taxpayers the benefit of the doubt if they were not registered correctly. For example, a field officer found through further investigation that one of the used car dealers who had said that he had lodged his income tax and that it was up-to-date had actually not lodged for the past three years. The field officer concerned explained to me that the dealer may have thought that he was telling the truth but got confused between his tax activities as a private person and his tax activities as a company.

2. *Be Suspicious*

As well as being friendly to taxpayers, and giving them the benefit of the doubt, most of the field officers interviewed considered that it was part of

their job to be suspicious. In addition to the checklist of questions, the procedure for walk-ins includes the following instruction: "While talking to the client or their representative, observe: the number of employees, the business processes, the client and/or staff's work practices, e.g. use of cash registers, and whether the business uses any significant assets."⁴

In general, this directive to observe various aspects of the business was interpreted by field officers as requiring them to think on their feet, making use of visual and behavioral information and asking additional questions in response to particular situations. Although not officially acknowledged, regulators have always exercised judgment and discretion. As Sparrow points out, "Even when bound by restrictive codes such as 'if you see it you must cite it,' inspectors may still choose whether or not to see it. They may even choose to look later, offering the opportunity for remediation beforehand" (2000: 26). Some officers included extra questions in the walk-in as standard practice. For example: Did the dealer sell new and used cars? Were they sold on consignment? From where were the vehicles sourced? As mentioned, if field officers knew who was compliant and who was not, they could modify their behavior towards the taxpayer; for example, there is no need to be looking for clues for non-compliance, if you know that someone is compliant. To those field officers who were trained auditors, however, certain visual and behavioral cues trigger a suspicion that something may be amiss. One field officer, who had been an auditor for almost ten years, told me, "If you're suspicious, then you ask questions. You don't assume anything. For example, if you see a beautiful boat in the yard, say, 'that's a nice boat—is that yours?'" Another field officer considered that "You can sometimes sense something not right about the person . . . you might do a bit more than the normal one just to satisfy your own intuition." One newer officer made the following comment about trying to detect non-compliance: "I had trouble with it at the start but the longer you've been in the game it becomes natural to you. You get trained to look at certain things so you can't help it."

3. *"Cover Yourself"*

Some field officers adhered strictly to the procedures of a walk-in, asking the same list of questions of everybody. This had the disadvantage of confining detection of non-compliance to issues of registration addressed by the official questions. Those officers who used their judgment and deviated from the procedure in order to try to detect non-compliance during a walk-in were generally uncomfortable with admitting the ways in which they did this. For example, a field officer spent time outlining some of the things he looks for while on a walk-in, in order to detect non-compliance. He qualified this later in the same interview with the comment that "walk-ins aren't a fishing exercise—just a quick check to make sure everything's OK." Three of the officers mentioned that it was important to follow the procedures

of a walk-in and not ask additional questions, as this is “fishing,” which is not allowed. “You get it drummed into you. You can’t deviate from the procedure as then it seems like a fishing exercise.” It was important to observe things such as the price of the cars, how many cars are in the yard, and staffing, “but you are not supposed to ask as then it becomes more than a walk-in.” Later in the interview this officer was more explicit about how to detect compliance while working within the official walk-in procedure. It was important to be on the look out for possible indicators of non-compliance, “but of course, you don’t make it obvious to the client.”

C. INTEGRITY OF FIELD OFFICERS’ APPROACH

It is suggested that the way that the ATO field officers understood and conducted the walk-in can itself be understood as a response to the pressures the field officers felt from management. Field officers obviously felt pressure to establish good relations with the taxpayer. This is fundamental to the effort to ensure voluntary compliance, and when first asked about the purpose of the walk-in, all officers answered in terms of building relationships with the taxpayers. The strategy of “be friendly” was a response to this. Field officers were also under pressure to detect non-compliance. In particular there was a subtle pressure to increase revenue through the detection of non-compliance. This aspect tended to be referred to only obliquely by field officers as if it contradicted the purpose of building relationships. However, an ATO manager with state responsibility for walk-ins put it to me that, “the whole purpose of walk-ins was to get some dollars.” The strategy of “be suspicious” was a response to this pressure.

The preceding description of the field officers’ approach raises the question of why, when the ATO Compliance Model involves being flexible in approach, did the field officers feel constrained to cover themselves by sticking to written procedures? It seemed that they were responding partly to a pressure from management and partly to what were perceived as onerous quality assurance procedures; with the two being related. A senior manager explained to me that the ATO does not want to face legal action from a taxpayer because a field officer did more in a surprise walk-in than s/he was legally entitled to do. An ATO non-field officer with some responsibility for walk-ins described walk-ins as, “almost like a toe in the water before you jump in.” He expected that the field officers should ask the small business additional questions such as, “Do you keep records?” “Are you registered for PAYG?” “What sort of records do you keep for that?” “Do you have a police book?” However, he considered that if the dealer refused to answer, it was important that the field officers “don’t push it, because it’s a walk-in.” They should use that refusal to answer as a basis for escalation, that is, to come back later to do a formal check, with the appropriate procedures in place.

The most common response by field officers who, during a walk-in, observed discrepancies between their own observations and taxpayer

responses to questions (e.g., if a car dealer said that he was the only one working the yard, but there appeared to be other staff working there), was to note the discrepancy and then use these notes in due course as a basis for further escalation. This is contrary to established notions of how a good regulator should behave (Bardach & Kagan 1982). In their model of a good inspector, Bardach and Kagan place importance on probing “in a polite but critical manner” (ibid.: 129). Moreover, as Selznick points out, commitment to procedure is a misunderstanding of integrity. “We sometimes identify integrity with consistency—doing the same thing in apparently similar cases, sticking to accepted rules, practices, or categories. This can be misleading . . . The bare case of consistency or inconsistency tells us little” (1992: 323). As Bardach and Kagan point out, “good inspection can flourish only in an organizational and political environment that cultivates it, or at least permits it” (1982: 151). It is beyond the scope of this study to explore the nature of the ATO’s quality assurance procedures; however, on the basis of negative comments made by field and non-field officers it would seem that the nature and extent of the ATO’s commitment to these quality assurance procedures is in tension with the flexible approach of responsive regulation.⁵

Good inspection requires a high level of skill and judgment in order to juggle successfully the building of relationships with detection of non-compliance. However, none of the field officers interviewed had received any specific training for conducting the walk-in. Instead, walk-ins were referred to dismissively by various field and non-field officers as “a basic product.” This reinforced the notion that a walk-in was simply a “tick and flick” exercise.⁶

It will be demonstrated in the next section how this lack of integrity in the conduct of the walk-in has the unintended consequence of working to undermine the dealer’s tax morale: their trust and confidence in the tax system, belief in the relative fairness of the tax system and belief in the fairness of the tax system.⁷

IV. TAXPAYER RESPONSE TO THE WALK-IN

A. WHAT TAXPAYERS SAID

1. *Effect on Trust and Confidence in the Tax System*

In order for taxpayers to have trust and confidence in the tax system, it is important for the tax office to present a competent face. However, as the following examples show, some car dealers thought that the walk-ins demonstrated the incompetence of the ATO officers in asking questions that they knew the answers to anyway.

The usual explanation that field officers gave for the walk-in was that it was to check some registration details and compare them with what was on the system. In the follow-up interviews, several car dealers indicated that they did not

believe this explanation. For example, one of the car dealers confided that he was sure that there was an ulterior motive to the walk-in. As soon as the walk-in was over, he rang around a few car yards to check whether they had also been visited. He was one of three car dealers who expressed the view that the ATO should be able to check registration details from the ATO system:

Well, I mean, it was ridiculous coming out and asking for my ABN [Australian Business Number] and all that stuff, he knows all that stuff. I mean, I couldn't understand it. You know, if you are going to go out and talk to people, do your work first—and they've got it on the computer anyway, so just look it up and walk out and, say, use the principle of whoever it is and ask the questions but don't go through that crappy stuff about . . . I mean he's only doing his job, but I mean the point was, he said I've got a series of questions to ask you and they were my name and address and the ABN number which he knew. You know, it was stupid.

In fact, it is not possible to identify used car dealers on the system, because (according to an ATO informant) the industry data is “up the creek;” a large proportion of used car dealers are coded to other industries.⁸ The interesting point is that these used car dealers were more likely to think that field officers were incompetent because they asked questions to which they already knew the answer than to contemplate the alternative, that the ATO couldn't extract this information from their “systems.” In other words, the faith of these used car dealers in the power of the technical side of the ATO system was maintained, while their confidence in the human element of the ATO system was diminished.

In some cases, rather than thinking that officers of the ATO were incompetent, the used car dealer interpreted the explanation given for the walk-in as evidence that the ATO officers were dishonest about what they were doing. For example, the following comment indicates that the used car dealer considered that the true motive of the walk-in was deterring non-compliance through visibility. “What she was doing, she wouldn't have found anybody. I bet she didn't find one person not registered. To say you were here checking. If she said ‘Oh look we're just here, show us your registration just so that you know we are out and about.’ To come in and say we're checking to see if you're registered. She could have done that without getting out of her chair.”

Apart from those who thought that there was an ulterior motive to the walk-in or that it was pointless, most used car dealers had no idea when I interviewed them later what the ATO did with the information they collected from the walk-in. This was even though each field officer had explained to the used car dealer that they would check the information they collected against the information in “the system.” It seems that the visit from the ATO did not register as significant to these used car dealers; they were not expecting the visit, and it generally lasted less than five minutes. This explanation is supported by comments such as the following: “to be honest, I haven't thought anything about it.”

2. *Effect on Opinion of Relative Fairness of the ATO*

Taxpayers expect tax officers to be involved in detecting non-compliance and indeed, for responsive regulation to work, the regulator has to be able to detect non-compliance. Several dealers approved the fact that the ATO was “doing their job” by making sure that everyone was doing the right thing. However, about half of the dealers indicated dissatisfaction with the ATO targeting used car yards. They thought that the ATO targeted licensed motor car traders while turning a blind eye to the “backyarders,” unlicensed individuals who make a living from selling cars for cash. There were two sorts of reasons for the dissatisfaction. Some of the used car dealers considered that targeting of car yards was unfair in relative terms: “I think it’s good, but I honestly think they should start getting some of the ones who aren’t registered and the ones that are making a lot of money which are actually affecting us.”

Other used car dealers considered that targeting of car yards was an indication of ATO incompetence: “Like the other day when they walked in here. The time could be better spent. If they put that lady, with all due respect to that lady, if they put that lady on a commission and said ‘Go where ever you like and we’ll give you \$100 for every unregistered business you could find,’ I bet you, she wouldn’t have come in here. No way in the world. You’d be down in the . . . Sunday morning market, you’d be down at the . . . market, you’d be in the . . . market.”

3. *Effect on Opinion of Procedural Fairness of the ATO*

All the used car dealers thought that the approach of the ATO field officer in the walk-in was “fine” or “no problem;” although some had stories about how the ATO had treated them unfairly at other times. Five dealers said that the procedure of the walk-in was inappropriate in that the ATO should make an appointment to visit rather than just turn up unannounced. Just one of the used car dealers seemed to have had his tax morale boosted by the walk-in:

When he left I was quite happy, yeah. I mean, I guess, what was good, was hey, look we’re trying to improve whatever, the client. Well, they’re making an effort.

B. OBSERVING THE WALK-IN—COMPLIANCE, DEFIANCE, AND NERVOUSNESS

Observing the walk-in interactions enabled an additional perspective on interactions between the ATO and taxpayers, indicating the limitations of relying solely on tax office or taxpayer accounts of their dealings with one another. Although in more than half of the observed interactions, the dealers were polite and obliging (including several who were subsequently escalated), in nearly half (i.e., twelve of the twenty-nine) the interactions

I observed, used car dealers exhibited defiant behavior, or seemed very nervous about the visit. These are not aspects that field officers tended to mention in the research interviews; they do not support field officers' presentation of self as friendly and non-threatening during the walk-in. Similarly, in the follow-up interviews, used car dealers did not refer to their own behavior during the walk-in as defiant or nervous; this would be incompatible with their presentation of self as being compliant and honest and having "no problem" with the visit. All the used car dealers presented themselves as compliant, both during the walk-ins and during the interviews. However, seven of the used car dealers were escalated. For example, there were some dealers who said that they were up to date with lodgement of BAS (business activity statements) or income tax, when in fact they were not.

Used car salespeople are notorious for presenting cars for sale in a particular light and it is to be expected that they would try to present themselves to the ATO as fully compliant. However, the walk-in is a surprise visit and possibly catches some dealers off-guard. In observing this spontaneous interaction between the ATO and used car dealers, I gained perspectives on the dealers' relationship to the ATO and the walk-in that I would not usually be privy to. Just as field officer and car dealer responses to questions are not representations of an objective truth, so are these sketches my interpretation of the situation. However, this does not necessarily reduce their validity; they are a "view from somewhere" (Haraway 1991).

In the very first walk-in I was involved with, we got a very suspicious reception. The manager wasn't there and we were told that he would be back in one hour. We called back in exactly one hour, by which time the manager had returned. He had a hostile manner and made a show of inspecting the ATO officer's card very closely. Standing next to him with arms folded across his chest was a fellow with dark wraparound sunglasses and a threatening presence. When the ATO officer asked for the ABN, the dealer walked inside and we were left standing outside—not knowing whether he was going to return or not. The ATO officer seemed very uncomfortable as we stood and waited, "guarded" by the silent figure in sunglasses. The dealer did come back out and stamped his ABN stamp on the checklist that the ATO officer was holding. The dealer gave, "My accountant deals with all of that" as a response to a couple of questions. The ATO officer did not ask all of the questions on the list. The dealer said that it was OK for me to call back, but that I should ring first. "You'll need more than 15 minutes to get my views on the tax office."

Another dealer was working under a car and was very reluctant to come and speak to us. His wife made him come out. He had engine grease all over his hands and his wife asked him to wash them, but he refused and made a show of holding up his dirty hands as if he wanted us to know that we were taking him away from his work. Several other car dealers demanded to see the field officer's ATO ID, even though it later transpired that they already knew what the walk-in was all about.⁹

Defiance signals a lack of trust and respect; possibly mixed in with fear. In the follow-up interviews, dealers made many negative comments about the ATO but had nothing much to say about the field officers themselves. This suggests that these taxpayers are signalling lack of trust and respect towards the ATO rather than to the field officer personally, and there was no evidence that the walk-in served to ameliorate this. These examples also demonstrate a gulf between ATO field officers' stated expectations of building relationships with taxpayers and the reality of the walk-in, a surprise visit that lasts just a few minutes.

I also witnessed interactions where the used car dealer responded nervously to the walk-in. This could be interpreted as further evidence that small businesses expect the ATO to be looking for non-compliance. For example, at one dealership the salesman seemed incredibly nervous as he went into great detail about why the owner was not there. Because the owner was not there, no actual registration check could be conducted and we left. Less than ten minutes after we had left, the absent owner called the field officer's mobile; the salesman had obviously rung the owner straight away and the owner was worried enough to immediately ring the field officer.

At another dealership, which had two car yards one kilometer apart, we spoke to a partner of the company and the field officer told him that we had just been to the other yard. When the field officer was going through the questions of the registration check, the partner was obviously trying to read what was in the field officer's folder, as it had the information that had been collected from the other yard. Although he was a partner in the company, this dealer responded to the questions on number of employees, and annual turnover, with, "same as what they said down the road," explaining that he did not really know much about the details. When I conducted the follow-up interview with this dealer, he was much more relaxed. However, he answered a question about the reasonableness of the walk-in with, "I am an honest taxpayer with nothing to hide," a question on whether the walk-in changed his impression of the tax office with, "It didn't scare me," and a question on his opinion of the Compliance Model with, "I just want to do the right thing." He also asked me several times whether other dealers said similar things to what he was telling me, as if to check that he was not drawing attention to himself through his responses. I do not mean to suggest by this that he was not honest, but I do mean to show that he was very concerned to give the impression that he was honest.

V. CONCLUSION

It should be borne in mind that the walk-in is a very small part of the ATO's operations. In addition, given the limitations of the data, all conclusions drawn from this study are tentative. Even so, this study of walk-ins has highlighted some of the challenges for a large bureaucracy as it tries to

move to a model of responsive regulation. Responsive regulation requires institutional integrity at the level of design, as well as in the everyday actions of field officers, and it could be argued that the official design of the walk-in is somewhat misguided in its current form. In general, the taxpayers in the study could not understand the purpose of the walk-in. Field officers were asking questions that the taxpayers expect the field officer should know the answer to. At best the taxpayers interpreted the walk-in as the ATO making an effort (although only one dealer expressed this view). More commonly, they considered it a demonstration of ATO incompetence or dishonesty.

Regardless of what the ATO says it is doing, small businesses expect the ATO to be trying to detect non-compliance. This was evident in the nervousness exhibited by some dealers during the walk-in, comments they made, and the effort they made, in both the walk-in and interviews, to present themselves as honest taxpayers. It seems that it would be appropriate for the ATO to be more upfront about its general purpose of trying to detect non-compliance. It could even be argued that integrity, manifest in principled conduct, requires some degree of transparency in ATO field officers' everyday dealings with taxpayers. I have shown how the lack of transparency undermines trust and confidence in the tax office, as well as some taxpayers' perceptions of procedural fairness. In other words, it has the perverse effect of ultimately undermining compliance. The pressure to detect non-compliance was subtle, and field officers seemed uncomfortable with admitting how they tried to detect non-compliance, but emphasized building relationships. Without returning to a culture of prosecution and audit, detection of non-compliance needs to be more explicitly brought back into the discourse of responsive regulation and the ATO Compliance Model so that ATO field officers can be honest in their dealings with taxpayers. It would have been interesting to go back and speak to those used car dealers who had been escalated, after they had realized that the ATO had commenced investigations as a result of the walk-in.

With regard to the everyday actions of field officers, the ATO is placing a huge responsibility on field officers. The field officers need to be able to exercise judgment, adequately supported by systems, supervision, training, and mechanisms in order for them to discuss difficult cases. Instead, field officers seem to be receiving mixed messages about how to do their job. On the one hand, they are encouraged to be flexible in their approach to the walk-in, asking additional questions if anything seems amiss. On the other hand, they are constrained by the ATO's quality-assurance requirements, which translate into pressures on field officers to stick to written procedures. This commitment to the written procedures for the walk-in seems contrary to the spirit of responsive regulation, which upholds flexibility of approach. Moreover, it has been shown that sticking to the walk-in written procedures limits the opportunity to detect non-compliance, and also has the unintended consequence of reducing taxpayer trust and confidence in the tax system.

Institutional integrity can only be achieved through a thinking through of possible unintended consequences, ensuring that means are appropriate to ends, and ensuring that the actions of the regulator makes sense to the regulatee, in this case the used car dealers. It also requires a commitment to process rather than the mechanical application of procedures. If responsive regulation is a two-handed game, institutional integrity requires that the left hand of the ATO knows of and approves of what the right hand is doing.

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NOTES

1. Some field officers identified themselves first so that they would not be mistaken for salespeople and turned away, regardless of whether or not the manager was there.
2. Quotation taken from "Walk-in Check Procedures," from the ATO intranet, accessed August 2004.
3. There are different types of escalation and each type has a name and associated procedures; for example, if a small business is not registered, then action is escalated to a registered enterprise check.
4. Quotation taken from "Walk-In Check Procedures," on ATO intranet, August 2004.
5. The ATO's quality assurance requirements were referred to with frustration by several field and non-field staff. These field officers recognized that quality assurance is necessary, but felt that the ATO procedures were unnecessarily cumbersome. For example, one officer referred to them as "a nightmare."
6. This expression came from one of the interviewed managers, who was making the point that walk-ins are not meant to be simply a "tick and flick" exercise.
7. These visits are only just one encounter between the ATO and the taxpayer; I am not suggesting that, by itself, the walk-in can shape perceptions.
8. An explanation for this offered by one ATO informant was that accountants had advised used car dealers that as the ATO would probably focus on the used car dealer industry, they should list under another industry.
9. For example, one had sat in on a walk-in with another dealer a fortnight earlier and later told me that he recognized me straight away.

REFERENCES

- Australia. Australian Taxation Office (2003) *Taxpayers' Charter—What You Need to Know*. NAT 2548. Canberra: Australian Taxation Office.
- Ayres, Ian, and John Braithwaite (1992) *Responsive Regulation: Transcending the Deregulation Debate*. New York: Oxford Univ. Press.
- Bardach, Eugene, and Robert A. Kagan (1982) *Going by the Book: The Problem of Regulatory Unreasonableness*. Philadelphia: Temple Univ. Press.
- Braithwaite, Valerie (2003) "Dancing with Tax Authorities: Motivational Postures and Non-compliant Actions." In *Taxing Democracy: Understanding Tax Avoidance and Evasion*, edited by V. Braithwaite. Aldershot, UK: Ashgate.

- Braithwaite, Valerie (2007) "Responsive Regulation and Taxation: Introduction," *Law & Policy* 29: 3–10.
- Braithwaite, Valerie, and Jenny Job (2003) *The Theoretical Base for the ATO Compliance Model*. Research Note 5. Available at <http://ctsi.anu.edu.au/researchnotesindex.html> (accessed 26 June).
- Braithwaite, Valerie, and Monika Reinhart (2000) *The Taxpayers' Charter: Does the Australian Tax Office Comply and Who Benefits?* Canberra: Centre of Tax System Integrity.
- Frey, Bruno (1997) *Not Just for the Money: An Economic Theory of Personal Motivation*. Cheltenham, UK: Edward Elgar.
- Haraway, Donna (1991) *Simians, Cyborgs and Women*. New York: Routledge.
- Hawkins, Keith (1984) *Environment and Enforcement: Regulation and the Social Definition of Pollution*. Oxford: Clarendon Press.
- Lewis, Alan (1982) *The Psychology of Taxation*. New York: Blackwell.
- McKerchar, Margaret (1995) "Understanding Small Business Taxpayers: Their Sources of Information and Level of Knowledge of Taxation," *Australian Tax Forum* 12: 25–41.
- Muir, William Ker (1977) *Police: Streetcorner Politicians*. Chicago: Univ. of Chicago.
- Murphy, Kristina (2002) "'Trust me, I'm the Taxman': The Role of Trust in Nurturing Compliance." Working Paper no. 42. Canberra: Centre for Tax System Integrity, The Australian National University and Australian Taxation Office.
- Murphy, Kristina (2003) "Procedural Justice and Tax Compliance," *Australian Journal of Social Issues* 38(3): 379–407.
- Parker, Christine (2006) "The 'Compliance' Trap: The Moral Message in Responsive Regulatory Enforcement," *Law & Society Review* 40: 591–622.
- Selznick, Philip (1992) *The Moral Commonwealth: Social Theory and the Promise of Community*. Berkeley: Univ. of California Press.
- Sparrow, Malcolm (1994) *Imposing Duties: Government's Changing Approach to Compliance*. Westport, Conn.: Praeger Publishers.
- Sparrow, Malcolm (2000) *The Regulatory Craft: Controlling Risks, Solving Problems and Managing Compliance*. Washington, D.C.: Brookings Institution Press.
- Taylor, Natalie (2003) "Understanding Taxpayer Attitudes through Understanding Taxpayer Identities." In *Taxing Democracy: Understanding Tax Avoidance and Evasion*, edited by V. Braithwaite. Aldershot, UK: Ashgate.
- Torgler, Benno (2003) "Tax Morale in Transition Countries," *Post-Communist Economies* 15(3): 357–81.
- Wenzel, Michael (2004) "Social Identification as a Determinant of Concerns about Individual-, Group- and Inclusive-Level Justice," *Social Psychology Quarterly* 67: 70–87.