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THE ONE THAT GOT AWAY:
DETECTING NON-COMPLIANCE IN ORDER
TO ENSURE VOLUNTARY COMPLIANCE

Vivienne Waller

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ENSURE VOLUNTARY COMPLIANCE**

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Abstract

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. The title of this article 'The one that got away' refers both to the job of ATO field officers, to catch the non-compliant taxpayer who eludes the system, and to the main argument of this paper, that the issue of detecting non-compliance has slipped away from the discourse of responsive regulation, and in particular, the ATO compliance model. Using evidence from a qualitative study of ATO 'walk-ins' with used car dealers, I demonstrate the negative consequences this has for the effective practice of responsive regulation. I conclude by suggesting that regulatory agencies should aim for institutional integrity (Selznick 1992) both at a broad theoretical level and in everyday practices.

The one that got away: Detecting non-compliance in order to ensure voluntary

Vivienne Waller

Two people walk into a small business, say a car yard, and ask to speak to the manager. Once they are speaking to the manager they identify themselves as from the Australian Taxation Office (ATO) and as conducting a registration check¹. 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 are 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 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 ATO 'walk-ins' to used car yards as a case study of Australian Taxation Office/small business interactions and use Goffman's (1969) notion of presentation of self as a framework for making sense of these interactions. After outlining the Australian Taxation Office (ATO) approach to compliance, and the official rationale for walk-ins, I examine field officers' stories about the walk-in followed by car dealers' stories about the walk-in. I conclude by telling my own stories about walk-ins based on my observations of actual walk-ins. The picture that emerges is of the walk-in as a complex and contradictory practice that, in some ways,

¹ Some field officers identified themselves first so that they would not be mistaken for sales people and turned away, regardless or whether or not the manager was there.

thwarts the effective practice of responsive regulation and undermines taxpayer trust and confidence. I argue that this outcome is inevitable as long as detecting non-compliance fails to receive explicit recognition in the ATO compliance model. I conclude by suggesting that regulatory agencies should aim for institutional integrity (Selznick 1992) both at a broad theoretical level and in everyday practices. Selznick's ideas of institutional integrity provide a conceptual framework that allows the regulatory agency engaged in responsive regulation to emphasise voluntary compliance and the building of positive relationships with the regulatee while simultaneously ensuring that non-compliance is both detected and dealt with.

The ATO compliance model - Ensuring voluntary compliance

Braithwaite (2003) demonstrates that 'the popular stereotype of the 'taxman' collecting the revenue through the process of detecting non-compliance and imposing penalties' is an inadequate account of the complexities involved in managing contemporary tax systems. The ATO compliance model has been developed as a means of dealing effectively with these complexities. Whereas the ATO used to have a confrontational approach that relied almost exclusively on audit and prosecution, the compliance model is based on the idea 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. The move to self-regulation in the 1990s reflects this change in the approach of the ATO. The rationale for the compliance model is derived from theoretical understandings of motivational posturing, responsive regulation and voluntary compliance.

Within a taxation context, motivational postures are a taxpayer's general attitudes towards the tax authority and these have been identified as commitment, capitulation, resistance, disengagement and gameplaying (Braithwaite 2003). A taxpayer's motivational posture may change over time and more than one motivational posture may coexist, even in a specific encounter with the taxation

office (Braithwaite 2003). Most importantly, a taxpayer's motivational posture does not necessarily match their actual compliance behaviour (Braithwaite 2003).

Ayres and Braithwaites' (1992) model of responsive regulation is a strategic approach to managing compliance. Rather than having just the one approach to non-compliance, it advocates matching the regulatory strategies and sanctions with the motivational posture of the taxpayer. This range of regulatory options means that the ATO can avoid "both the mistake of selecting a sledge hammer to swat a fly and selecting a flyswatter to stop a charging bull" (1992:52). Most taxpayers are assumed to be compliant and capable of self-regulation. For the small group of intransigently non-compliant taxpayers, there is a range of escalating regulatory options, such that the ultimate sanctions are only used as a last resort after a taxpayer has had repeated opportunities to become more compliant. In the case of the ATO, prosecution is the ultimate sanction.

Deterrence

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; Grasmick and Bursik 1990; Richardson and Sawyer 2001). In other words, if taxpayers believe that non-compliance will lead to prosecution, they will be more likely to voluntarily comply.

However, the threat of prosecution is not the only way of ensuring voluntary compliance. Lipsky (1980) argues that when the policy of a bureaucracy is enacted through the everyday actions of officers in the field, compliance can be obtained not only through coercive means but also through normative means; for example through field officers building positive relationships with clients. While deterrence theory illustrates how the ATO can obtain some level of voluntary compliance

through coercive means (or, at least, the threat of coercion), the concepts of tax morale and procedural fairness illustrate what is necessary for the ATO to obtain voluntary compliance through normative means.

Tax morale

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 (Sparrow 1994; Murphy 2002) including perceptions that the system is fair (Murphy 2003; Taylor 2003)². Ahmed and Braithwaite (2004) argue that the tax office should put greater effort into boosting tax morale through educating taxpayers about their obligations under the tax system and persuading them of its benefits. Selling tax compliance to small business as good business practice is an example of this approach; for example, through ATO publications such as “The Simplified Tax System: What’s in it for my business” and “How the Australian Business Number will benefit Australian Business”. 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 and Reinhart 2000). The Taxpayer’s Charter has been developed to ensure that the ATO is procedurally fair, and is seen as such (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.

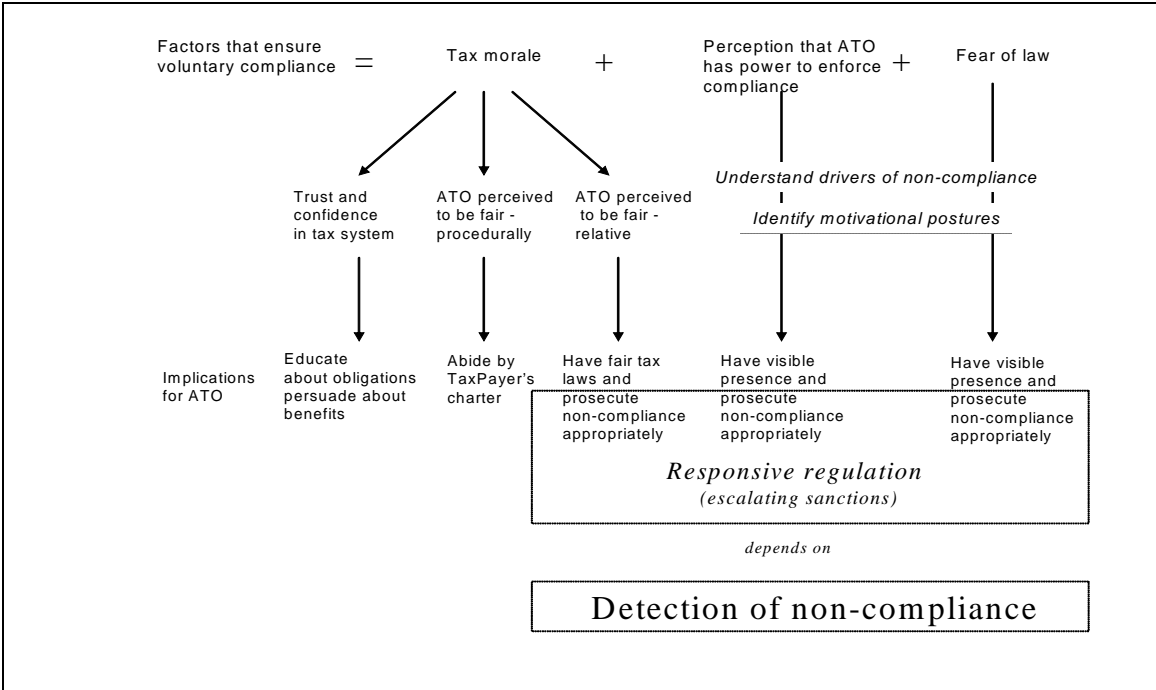
In summary then, three key factors in ensuring tax compliance are fear of the law, the desire to do the right thing and perceptions that the ATO has the power to enforce compliance (Braithwaite 2003). In essence the ATO compliance model comprises assessing options for turning non-compliance into voluntary compliance (Braithwaite

² Feld and Frey (2002) suggest that tax morale is higher the greater the influence that taxpayers have in shaping the tax system.

and Job 2003) and using the model of responsive regulation and understandings of motivational posturing to choose the strategy that is likely to be most effective.

The literature referred to above demonstrates how tax morale is necessary for ensuring voluntary compliance. However, this is not evidence that these measures alone are sufficient for voluntary compliance. Moreover, as Figure 1 makes clear, ensuring voluntary regulation itself relies upon being able to detect non-compliance. This means that regardless of the level of voluntary compliance, there will be a need for the regulator to engage in detection of non-compliance as well as engage in other activities necessary for voluntary compliance.

Figure 1: The ATO Compliance Model



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). In this article, I analyse how the ATO compliance model translates to the everyday activities of field officers of the ATO charged with playing this two-handed game in their

encounters with taxpayers during a walk-in. I argue that the game has been defined such that a focus on the detection of non-compliance is discouraged as unsportsmanlike, counter to the spirit of the compliance model, and I examine the implications of this for ensuring voluntary compliance.

Methodology

Whereas most studies of tax compliance have involved self-reporting of behaviour, 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 3 months between March and May in 2004, as researcher I accompanied individual ATO field officers from a regional office on 33 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 29 interactions between used car dealers and ATO field officers and 21 walk-ins actually conducted. I travelled with the field officers to and from the walk-ins and so was able to get a sense of their opinion about each visit. In addition, I conducted formal interviews with these field officers as well as with field officers from another office and with 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 18 of the 21 used car dealers who I witnessed experiencing a walk-in³. 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 be likely to impact on the behaviour 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 fully accept. During the follow-up interviews, several interviewees repeatedly glanced down at my business card as if to check that I wasn't 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 preciseness 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.

³ Of the other three, one had gone overseas, one was unwilling to participate in an interview, and one was unable to be contacted.

The walk-in

In this article, the walk-in is used as a window onto ATO/small business interactions. 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'. Hence, the official rationale for the walk-in relates to deterring non-compliance and boosting tax morale. Non-lodgers affect the integrity of the tax system as a whole (Williams 2001). 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 look out for those 'doing the wrong thing'.

Walk-ins are not a response to individual taxpayer motivational postures, but to ATO intelligence on industries which 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 economy⁴ 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.

At one level, a walk-in is very straightforward, as in the description at the beginning of this paper. However, one crucial factor has been left out of that description of a walk-in. As well as the checklist of questions, the procedure for walk-ins includes the following instruction.

⁴ The cash economy is economic activity that is not accounted for through normal channels as required by the taxation systems.

“While talking to the client or their representative, observe: the number of employees, the business processes, the client and/or staff’s work practices, eg. Use of cash registers, and whether the business uses any significant assets.”⁵

This additional instruction gives walk-ins a schizophrenic quality. They are just a registration check and at the same time, field officers have to have their eyes and ears open for any indications that the dealer is not fully compliant. 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. So are walk-ins a way of ensuring voluntary compliance or of detecting non-compliance? According to one ATO manager with responsibility for walk-ins, ‘the whole purpose of walk-ins was to get some dollars’.

This ulterior purpose of the walk-ins has implications for how field officers understand the purpose of the walk-in, as well as how they conduct the walk-in and how they talk about its conduct. There are also implications for how the dealers understand the walk-in and respond to it.

During the walk-in and during the research interviews, both field officers and used car dealers were involved in impression management (Goffman 1969). In other words, they tried to give the appearance that their conduct ‘maintains and embodies certain standards’ (1969:93). Understandably, field officers wanted to present themselves to me in the research interviews as competent and as conducting walk-ins appropriately.⁶ During the walk-in, most field officers tried to present themselves to the used car dealers as friendly and non-threatening. The used car dealers tried to

⁵ Source: ‘Walk-in check procedures’ on ATO intranet

⁶ Field officers who feared that the research would be an evaluation of their performance did not agree to me interviewing them or accompanying them on walk-ins.

present themselves as honest taxpayers in both the walk-ins and the research interviews.

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, obviously field officers don't have this information on compliance status when they conduct the walk-in; the ATO may never get accurate information on this.

Walk-ins: Ensuring voluntary compliance and/or detecting non-compliance?

Because ATO field officers are required to make decisions about other people in specific interactions, they fit Lipsky's (1980) definition of street level bureaucrats. As Lipsky demonstrates, this sort of decision-making can never be done in a purely routine way; the nature of the decision made will depend to a certain extent on the field officers' private conceptions of the goals of their jobs. For example, in the area of justice, Lipsky argues that street-level bureaucrats may be oriented towards punishment and deterrence or towards corrections and rehabilitation. In the area of taxation, this would translate to ATO field officers being oriented towards ensuring voluntary compliance or towards detecting non-compliance. However, as the following section demonstrates, in practice, a field officer's understanding of the purpose of the walk-in tends to be a complex mix of both ensuring voluntary compliance and detecting non-compliance.

The first field officer story: Ensuring voluntary compliance

When first asked about the purpose of the walk-in, all of the interviewed ATO officers answered in terms of ensuring voluntary compliance. For example, some 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’:

“Walk-ins are a way of connecting with people “we’re here to check but we’re here to help”.

The types of non-compliance that can be detected from the list of questions asked in the registration check include detection of non-registration for GST, non-registration for PAYG (Pay as You Go tax), non-lodgement of BAS (Business Activity Statement), and use of incorrect ABN (Australian Business Number). Any non-compliance detected in this way 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.”

Although a registration check could be interpreted as a way of detecting non-compliance, field officers spoke about the registration check as a way of ensuring voluntary compliance. In addition, they were explicit about giving taxpayers the benefit of the doubt if they weren’t registered correctly. For example one of the used car dealers who had said that he had lodged his income tax and it was up to date had not actually lodged for the past three years. The field officer concerned explained 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.

Field officers also saw the walk-in as helping to ensure compliance through the deterrence effect gained from making the ATO visible. The visibility of the police uniform and police car mean that police can deter non-compliance simply by being

present (Sparrow 1994). The tax office, however, does not have such an immediately recognisable presence. Having field officers knock on the doors of small business, and introduce themselves as from the tax office is a way for the tax office to be a visible presence among small businesses. A team leader who considered that one of the main purposes of the walk-in was to give the ATO a visible presence in the field, organised the walk-ins to maximise this effect. Teams of eight field officers would work the one area. Two groups at each end and on both sides of the street would work towards each other until they converged.

The plot thickens: Detecting non-compliance, no fishing allowed, look but don't ask

Although when first asked about the purpose of the walk-in, all officers answered in terms that related to ensuring voluntary compliance, at some point in the interview, all but two of the ATO officers interviewed talked about the walk-in as a way of detecting non-compliance. Across all industries, approximately one third of walk-ins are escalated; the proportion of walk-ins to used car yards which are escalated is much higher⁷. One field officer had escalated about half of the walk-ins in which he had been involved and considered that "walk-ins are pretty effective as a product". There were different ways in which this detection of non-compliance was attempted. 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?

An ATO non-field officer with some responsibility for walk-ins who described walk-ins as "almost like a toe in the water before you jump in", expected that the field officers should ask the small business "Do you keep records?" "Are you registered for PAYG?" "What sort of records do you keep for that?" "Do you have a police book?" 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'. However, they should use that refusal to answer as a basis for escalation, that is, to come back later to do a formal check.

As mentioned, if field officers knew who was compliant and who wasn't they could modify their behaviour 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 a trained auditor, however, certain visual and behavioural cues trigger an expectation that something may be amiss. One field officer who had been an auditor for almost 10 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."

Sparrow (2000) points out that although not officially acknowledged, regulators have always exercised judgement and discretion:

"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)

It seemed, however, that officers were generally uncomfortable with admitting the ways in which they tried to detect non-compliance during a walk-in. For example, a field officer spent time outlining some of the things he looks for while on a walk-in in

⁷ 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

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 like 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’.

I suggest that the second of the rights listed in the Taxpayer’s charter is at the centre of the dilemma for field officers engaged in detecting non-compliance. The Taxpayer’s charter is a public document which informs taxpayers of their rights and obligations when dealing with the ATO. It lists thirteen taxpayer rights. The second one states that taxpayers can expect the ATO to ‘treat you as being honest in your tax affairs unless you act otherwise. We presume you’re trying to deal honestly with your tax affairs, unless your actions give us reason to think otherwise’. It is a slippery issue; if you are on the lookout for possible indicators of non-compliance, are you treating the taxpayer as dishonest?

If during a walk-in the field officer observed discrepancies between their own observations and taxpayer responses to questions (for example, if a car dealer said that he was the only one working the yard, but there appeared to be other staff working there), the most common response was to note the discrepancy down and then use these notes in due course as a basis for further escalation. Although two

a registered enterprise check.

field officers said that they would seek an explanation from the dealer right there and then, most said that they would make a note for escalation later. This is understandable in terms of the impression that field officers are trying to convey. Observations which seem to conflict with dealer responses provide 'destructive information' (Goffman 1969) which if the field officer drew attention to them would discredit the impression that the field officer is treating the taxpayer as honest.

Regardless of whether they considered the walk-in to be a way of detecting non-compliance, most field officers considered that their approach to the walk-in was friendly. Half of the field officers mentioned that they wished to build a relationship between the taxpayer and the ATO during the walk-in. One officer, conscious of the ambiguous 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".

'Be kinder and gentler - but don't let the bastards get away with anything' (Sparrow 2000)

Lipsky (1980) is explicit about the different pressures that field officers face. In the case of the ATO, these include ATO and community pressure that they will find tax 'dodgers', pressures of the Taxpayers' Charter that they will treat taxpayers as honest, and community expectations of proper tax field officer practice. Lipsky refers to these conflicting goal expectations as part of "role ambiguity" and argues that this role ambiguity impedes the performance of the individual as well as the direction of the organisation.

Field officers have to work out their own ways of dealing with this role ambiguity. The point of view of relatively new field officers is particularly useful as it highlights assumptions and ways of behaviour that are taken for granted by more experienced field officers and of which they may not even be aware. 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." In contrast, another new officer ignored the instruction to observe any anomalies during a walk-in. She understood the walk-in purely in terms of helping the taxpayer to comply and considered that "if you say that you are going for some reason but in fact we are looking and checking for something else, then we are not doing our job - that is unprofessional".

The ATO has to walk a fine line between being friendly and helpful and not being 'soft'. Sparrow (2000:17) neatly summarises 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". Moreover, in the case of the ATO, field officers not only have to detect non-compliance, but in the event of detecting non-compliance, 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)

As has been demonstrated, the most common way that field officers chose to walk this fine line during a walk-in was to present as if ensuring voluntary compliance, while also covertly trying to detect non-compliance. How do the used car dealers respond to this?

Used car dealers stories: The effect of walk-ins on tax morale

As discussed earlier, walk-ins are intended to boost tax morale. In the following section, used car dealer's comments about the walk-in are analysed in order to understand the effect of the walk-in on 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 procedural fairness of the tax system

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 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 industries⁸. 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, these used car dealers' faith 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 like the following:

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 used car dealer

‘To be honest, I haven’t thought anything about it’.

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 its good, but I honestly think they should start getting some of the ones who aren’t registered⁹ and the ones that are making a lot of money which are actually affecting us.’

‘There’s a lot of backyarders for a start, people selling cars from home. Going to the auctions and buying them, winding the speedos back and they get more cash and it just makes it harder for us, so they should be making sure everybody is doing the right thing. Its quite easy. The government doesn’t seem to do anything about it’¹⁰

Other used car dealers considered that targeting of car yards was an indication of ATO incompetence:

industry, they should list under another industry.

⁹ Not registered meaning not licenced as motor car traders.

¹⁰ As both of these dealers were escalated as a result of the walk-in, it would have been interesting to have asked them their opinion of the walk-in after they had been notified of ATO follow-up action.

‘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 wherever 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.’

Procedural fairness of the ATO

All of 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.’

In the main, it seems from the car dealer’s stories that the walk-ins had a negative or no effect on tax morale.

My story: Compliant but defiant or nervous taxpayers

So far we have explored field officers’ and used car dealers’ stories about the walk-in. The fact that I was present during the walk-in enables the telling of a third story; my observations of the interactions. In nearly half (12 of the 29) interactions I observed, used car dealers exhibited defiant behaviour or seemed very nervous about the visit.

However, 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. I observed that each of the field officers smiled pleasantly at the taxpayer, usually at the end of the walk-in. I interpreted this as an 'appeasement gesture' (Goffman 1971) intended to neutralise the invasiveness of the walk-in, although there was little mention made by field officers of negative reactions to the visit. In fact, the field officers whom I accompanied made comments that the walk-ins had all gone very well.

Similarly, in the follow-up interviews used car dealers did not refer to their own behaviour 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.¹¹ For example, there were some dealers who said that they were up to date with lodgement of BAS or income tax, when in fact they were not. One of the cases where there were interactions between a field officer and a used car dealer but no registration check conducted was also recommended for further investigation by the ATO. In this case the official registration check could not be conducted as the manager was purportedly not there; however, the field officer recommended further investigation on the basis of behavioural and visual information gathered during the visit.

¹¹ Escalation, in and of itself, does not mean that the car dealer was non-compliant. Similarly, just because a car dealer was not escalated does not mean that he was compliant.

In the remainder of this article, I sketch an outline of seven of the interactions between field officers and used car dealers¹². Although in more than half of the observed interactions, the dealers were polite and obliging (including several who were subsequently escalated), I have deliberately only selected some of the interactions which are illustrative of defiant or nervous car dealer responses to the walk-in. 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).

Used car salespeople are notorious for presenting cars for sale in a particular light and, as I have argued, 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 dealer, I gained perspectives on the dealers' relationship to the ATO and the walk-in that I would not usually be privy to. I conducted follow-up interviews with three of the dealers in the following sketches (scenes 1, 3 and 7) but nothing in their manner or what they said during these interviews indicated the nature of the interaction I observed during the walk-in.

Scene 1:

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

¹² These represent almost one quarter of the interactions (7 of the 29) which I observed, including 4 of the 21 walk-ins.

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 which 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."

Scene 2:

This dealer was working under a car and was very reluctant to come and speak to us. His wife made him come out. We went into his office where he sat down while his wife stood behind him. 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. He was not very happy with the ATO and taxes. He had a lot to say about the ATO and how it was 'squeezing poor people' like him but he didn't really want me to call back.¹³

Scene 3:

When we first called into Best Cars¹⁴, the owner wasn't there. A worker offered to ring him and bade us sit and wait in the office. We sat and waited for a while and then left. When we returned, the owner was there. He demanded to see the field officer's ATO ID although he already knew what the walk-in was all about. He had sat in on a walk-in with another dealer a fortnight previous and told me that he recognised me straight away. Apart from the defiant gesture of demanding to see the field officer's ATO ID card, this dealer was friendly.

¹³ I did not reinterview this dealer given his unwillingness to participate in a follow-up interview.

¹⁴ All names of people, caryards and places have been changed.

Scene 4:

The dealer of Cheap Cars was on the phone when we first entered and completely ignored us. This dealership was linked with Good Cars (a few doors up) and it seemed likely that they had rung and warned him that we were coming. Eventually, we left because the dealer was still talking on the phone and had made no signs of recognising that we were there. We returned about 15 minutes later and this time we were able to speak to the dealer who immediately asked to see the field officer's ID. This dealer's attitude appeared to be one of contemptuous indifference; he swung around on his chair as the field officer asked him questions and gave his turnover as "minus \$30,000". The field officer tried to explain that turnover can't be negative, giving examples of what turnover was but the dealer couldn't have cared less and seemed quite bitter that he was making a loss. When I asked if I could call back he said "Fine, come whenever you want, but I won't be here. Friday is my last day". It was difficult to know whether the behaviour of this dealer was due to his job being about to end or a reaction to the ATO.

Scene 5:

"Hi I'm Harry from the ATO". The woman in the car yard looked very worried and went into the next office and said "It's the tax office". The man who came out was quite defiant and the three of us stood there in a small hallway. The man asked the ATO field officer if he had his card, to which the ATO field officer said 'yes', but didn't produce it. There was quite an altercation as the man said that the manager wasn't there - the manager was out buying cars and managing - why didn't the tax office ring first instead of wasting their time like this. The field officer said that he would call back some time to which the man asked again for his card. The field officer produced his business card rather than his ID, gave it to him and said he'd call back. The man seemed somewhat worried about this visit but also had a defiant manner.

We went back about 20 minutes later, as this time, the field officer wanted to ask the man if he was authorised to answer the tax checklist. He wasn't, and so we left.

Defiance signals a lack of trust and respect; possibly mixed in with fear. The defiance exhibited by the used car dealers in the above scenes could have been directed towards the ATO or could have been directed towards the individual field officer. Various commentators have recognised that field officers enactment of policy is dependent on these officers' 'culture-bound skills' (Lipsky 1980; Collins and Kusch 1998). Although quite striking socio-cultural differences between field officers and motor vehicle dealers were observed, it is beyond the scope of this study to explore the implications of this. Rather, I suggest that any negative reaction from a used car dealer was due more to the fact that the field officer was from the ATO than a response to the field officer themselves. To support this, I draw attention to the fact that 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.

As the preceding section showed, in addition to the taxpayers who were defiant during the walk-in, there were taxpayers who were very polite during the walk-in but who made statements critical of the ATO and of the walk-in during the follow-up interview.

Turning now to two scenes where the used car dealer responded nervously to the walk-in:

Scene 6:

Great Cars was a tough-looking dealership with a large number of cars in the yard. The salesman seemed very nervous after the field officer identified herself as from the Australian Taxation Office. The owner was not there and the salesman told us how the owner was in Beachville at his holiday house and had to stay an extra day because his boat got stolen; he is talking to police about it and will be back tomorrow "100%". This story was delivered with a deal of nervous energy. The salesman seemed incredibly edgy and I found it hard to know whether or not he was telling the truth. Because the owner was not there, no actual registration check could be conducted and we left. However, less than 10 minutes later, the absent owner called the field officer on her mobile; the salesman had obviously rung the owner straight away and the owner was worried enough to immediately ring the field officer.

Scene 7:

After conducting a walk-in at Super Cars, we visited Super Cars' second caryard approximately one kilometre down the road. 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 the information in the field officer's folder that had been collected from the other yard. To the questions on number of employees, and annual turnover, he responded "same as what they said down the road", explaining that he didn't really know much about the details. I found this unconvincing, given that he was a partner in the company. Although he was very friendly and responded politely to the field officers' pleasantries, I sensed that he was keen for us to leave.

The taxpayers depicted in Scenes 6 and 7 both seemed very nervous during the surprise visit from the tax officer. When I conducted the follow-up interview with the dealer in Scene 7, he was much more relaxed. However, he made an obvious effort to present as an honest taxpayer, answering 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.

Conclusion

The interactions observed during the walk-in indicate the limitations of relying on tax office or taxpayer accounts of their dealings with one another. The defiance exhibited by some taxpayers during the walk-in signals a lack of trust and respect in the ATO and indicate that the goal of using a walk-in to build relationships with taxpayers is an unrealistic goal for a walk-in. In addition, I suggest that the nervousness exhibited by some dealers during the walk-in and the effort dealers made, in both the walk-in and interviews, to present as an honest taxpayer indicates that regardless of what the ATO says it is doing, small businesses expect the ATO to be trying to detect non-compliance.

I have shown how a lack of transparency in field officers dealings with taxpayers undermines trust and confidence in the tax office, as well as some taxpayers' perceptions of procedural fairness. In other words, it ultimately undermines compliance. Moreover, it is arguable that it contravenes the first item of the Taxpayer's Charter, "treat you fairly and reasonably", if field officers cannot truthfully account to taxpayers for what they are doing. It would have been interesting to go back and speak to those used car dealers who had been escalated, after they had realised that the ATO had commenced investigations as a result of the walk-in.

This paper is not intended, in any way, to suggest that the ATO should change its emphasis from ensuring voluntary compliance. However, it does suggest that

detection of non-compliance needs to be explicitly brought back into the discourse of responsive regulation and the ATO compliance model so that ATO field officers can be honest about their work. Care needs to be taken in doing this; the 'compliance trap' (Parker 2004) 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.

Philip 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)

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. However, as has been argued in this paper, detection of non-compliance has been skimmed over in the ATO compliance model. This undermines the integrity of the whole system as obviously non-compliance needs to be detected before it can be successfully dealt with via responsive regulation.

At the level of everyday practices, integrity manifests in principled conduct. As has been mentioned, the TaxPayer Charter outlines taxpayer rights and responsibilities and the taxpayer rights include principles for ATO conduct when applying the

compliance model. However, what Selznick means by principled conduct extends beyond how regulators treat regulatees to include how effectively the regulators do their job.

I have demonstrated the ambiguity for ATO field officers around what constitutes best practice for the conduct of the walk-in. Some field officers interpreted best practice as adhering strictly to the procedures of a walk-in and asking the same list of questions of everybody. Selznick makes the following comment:

‘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)

Other field officers understood best practice as involving thinking on one’s feet and exercising discretion; for example, making use of visual and behavioural information and asking additional questions in response to particular situations. This interpretation of best practice is more in line with Selznick’s commitment to process rather than procedure. Selznick describes process as richer than procedure and something that cannot be ‘reduced to a specific set of forms or rules’ (1992:286). “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” (1992:333). 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 examining the everyday interactions of field officers who are charged with ensuring voluntary compliance but are also under strong pressure to detect non-compliance, this paper has shown that regardless of whether field officers work in the spirit of Selznick’s concept of process or adhere to procedure, their actions can

have the unintended effect of undermining taxpayer trust and confidence or thwarting the effective practice of responsive regulation. The evidence presented in this paper suggests that this is likely to be the case whilst ever detection of non-compliance is not explicitly included in the ATO compliance model.

In order to maintain institutional integrity, the compliance model, or rather the theory of responsive regulation on which it depends, needs to be expanded to explicitly include detection of non-compliance. In addition, at a grass-roots level, integrity requires transparency in ATO field officer's everyday dealings with taxpayers. In other words, the ATO can continue with its two-handed game: 'to deal with the wrongdoing today, while nurturing consent for tomorrow'. However, if it wants to win, it just might need to deal with integrity and lay some more of its cards on the table.

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