

eJournal of Tax Research

1 INTRODUCTION

Taxation plays an important role in economic management and in the provision of public goods and services (Allan 1971). Consequently, improving voluntary compliance with tax systems is a goal of many governments and revenue authorities (OECD 1998; Tanzi 2000). Compliance has been traditionally achieved through deterrence methods such as the fear of audit and associated penalties based on the assumption that taxpayers will comply only when forced (Becker 1968; Allingham & Sandmo 1972; Braithwaite, V 2002a). In more contemporary times many revenue authorities have sought other approaches to improving voluntary compliance by taxpayers.

The Australian Taxation Office (ATO) adopted the cooperative compliance model

Figure 2: The CCM for LBI

(Commonwealth of Australia 2000, p. 5)

The pyramid applies two regulation theories (responsive regulation and motivational posturing) with the aim of assisting the ATO to determine an appropriate response to WKH W D compliance of noncompliance. As its name suggests, a motivational posture attempts WR FR PELQH compliance and uncompliance behaviour into a single descriptor. There are four possible motivational postures: *commitment* (labelled as *managerial accommodation* in Figure 1), *capitulation* (labelled as *capture* in Figure 1), *resistant* and *disengaged* (Commonwealth of Australia 1998; Braithwaite, V 2002a).

The CCM assumes that most taxpayers have a commitment posture. The pyramid determines that the appropriate response to these taxpayers is self-regulation aided by education and service or any appropriate means to help them to comply. Taxpayers who capitulate are those who have some small motivation toward noncompliance. The ATO meets this posture with assisted or enforced self-regulation that is designed to persuade taxpayers to comply without resorting to penalties through the fair treatment and

- x Current and former ATO employees.
- x Taxation academics.
- x Other ± comprising tax professionals or members of the Cash Economy Task Force who are not in any of the other categories above.

Table 1 provides details as to the numbers interviewed.

Table 1: Interviewee categories

Category of Interviewee	Number of interviews
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way of enacting power with the goal of producing behaviour instead of oppressing it (Foucault 1977, 1978; Mills 2003). Society also became a confessing society offering up information for institutions to use for behavioural control (Foucault 1978; Rouse 1994).

With the rise of the social sciences is commensurate with disciplinary power since it relies on the knowledge gained through the use of social science methods and theories in order to understand and control the behaviour of individuals and populations (Foucault 1977, 1978; 21) DUUHO

Enclosures and partitions are supported by *functional sites*: multi-purpose architectural forms within prisons, schools, factories or hospitals) R X F D X O W 2 ¶) D U U H O
These are also designed to aid in observation but also to help make the individual produce output effigor

potential noncompliance with reference to norms and standards determined through the use of knowledge of a similar nature, and its potential relevance to tax administration under the CCM outlined, the article will now discuss the history of the CCM with respect to administrative equity and administrative efficiency through a Foucauldian lens.

5 DISCUSSION

5.1 Perceptions of unfair treatment and harsh punishments

As discussed in Whait (2012), one of the drivers of the development and adoption of the CCM was a desire to create a more administratively equitable tax system. Further evidence can be produced to illustrate how a desire to achieve this was influential. This evidence revealed that the ATO was often inequitable in numerous ways when it came to audit conduct, collection of tax debts and in the manner that it applied penalties. Generally, the perception of certain taxpayers, some in the tax profession, those conducting inquiries into the ATO and the Commonwealth Ombudsman throughout the period under study was that some within ATO favoured the wealthy over the poor with the latter being subject to undue attention or unfavourable treatment. It must be noted that such practices were the result of only a small minority (Commonwealth of Australia 1993; Senate Economics References Committee 2000). Enough was made of these practices, however, that the ATO had to change. This section illustrates how this occurred, how this may be regarded as an inappropriate and ineffective use of power and how it led to the development and adoption of the CCM.

In 1992 the Senate Estimates References Committee, at which senior ATO officers including Commissioner Carmody were present, discussed instances of alleged poor treatment of taxpayers through auditor misconduct (Senate Estimates Committee 1992, p. 305). While the Committee did not believe that audit misconduct was a widespread problem, it recommended that the ATO do more to curb it (Senate Estimates Committee 1992, p. 305). The discussion continued in the Joint Committee of Public Accounts report *An Assessment of Tax* (Commonwealth of Australia 1993; McLennan 2003). This

concerns over mechanical treatment given to small debtors while the Joint Committee of Public Accounts and some in the profession commented that ATO audit officers at times placed too much emphasis on following procedure rather than achieving the appropriate outcome (Commonwealth of Australia 1993; Lampe 1995; Williams 1996).

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References Committee a few years later (Senate Economics References Committee 2000).

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DGPLQLVWUDWLRQ WKDW KDG μJURZQ WR LJQRUH WKH
Australia 1993, p. vii). Thus the Joint Committee of Public Accounts emphasised the
importance of an equitable tax administration and that the ATO had to improve its
performance in that regard by using its powers more appropriately (Williams 1996;
McLennan 2003). Similar concerns were raised at the Senate E

to the introduction of the prison system, such a punishment was determined with the aim of rehabilitating the criminal. Similar observations can be made in the development and adoption of the CCM. The first response that the ATO made in response to the above criticisms was essentially forced upon it by the Joint Committee of Public Accounts.

The Joint Committee of Public Accounts argued that ensuring proper conduct was the \$ 7 2 ¶ V U H V S R Q V L E n i s i o n a l l e v e l C o m m o n w e a l t h o f A u s t r a l i a 1 9 9 3 ; Williams 1996). Therefore it recommended that the ATO adopt a 7 D [S D \ H U V ¶ & K D U W to redress the balance of power between it and taxpayers (Commonwealth of Australia 1993; McLennan 2003). It was important for the tax system to be fair and seen to be fair and the 7 D [S D \ H U V ¶ was to help achieve that (Bentley 1995). Upon releasing the draft 7 D [S D \ H U V ¶ in 30 October 1995, Commissioner Carmody acknowledged that the ATO had wide-ranging powers and that a sense of balance between these and the rights of people in the community was required (Australian Taxation Office media release 95/46 as cited in Williams 1996; Edmonds 2010). After its adoption on 1 July 1997, the 7 D [S D \ H U V ¶ appeared not to gain widespread acceptance within the ATO, a development that Commissioner Carmody was disappointed about

the CCM became popular within the ATO (Commonwealth of Australia 1998). Applying penalties to taxpayers who genuinely found it difficult to comply was regarded as inequitable in the eyes of the Cash Economy Task Force members.

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Cash Economy Task Force member).

The CCM therefore allowed the ATO to move away from a one-size-fits

Foucault argued that the method of choosing the punishment advocated by the reformers had the advantage of diluting responsibility of the punishment making it difficult to determine who decided it. The CCM works in a similar manner since the ATO could deflect criticism of its approach by appealing to the CCM and its balanced method of dealing with taxpayers. The experiences of previous Commissioners of Taxation may have influenced a desire to adopt an apparently benc1()f1()33(ad6)22(asi)4(o)22che tot33(ad6d)-5(s)

management were important steps toward that aim as they allowed the ATO to focus its resources on the risks to the revenue (Wickerson 1994a, 1995, 1996). Project Based

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space, albeit notional, and time in accordance with the techniques of discipline (Foucault 1977). As Foucault described in *Discipline and Punish*, the enclosure was described as a clearly defined space such as a prison or a hospital where the group being regulated is clearly defined as prisoners or patients. Although the ATO pays more attention to some taxpayers than others, it nevertheless regulates all taxpayers and thus the entire taxpaying population may be regarded as the enclosure. The ATO has no jurisdictional authority over citizens who are not taxpayers in a similar fashion to prison guards having no authority over free citizens. The market segments just described may

Similar types of data was used in the paint industry and the fish and chip shop industry with respect to the amount of paint required to paint a room or the amount of fish required for a serve of fish and chips. This knowledge was used to assess the likely noncompliance of the taxpayer in those industries. These examples illustrate how society became a confessing society in accordance with Foucauldian theory.

Some techniques were newly developed during the Cash Economy Task Force. One technique was the real time review (Commonwealth of Australia 1998). These reviews differed from an audit since they simply involved observation of the business. In a similar fashion to what occurred in the taxi industry, a business was chosen on the basis of its deviation from an industry norm where businesses, say restaurants, in the same location were compared to each other. Instead of auditing all the outliers, the ATO decided to visit one explaining that a review would be preferable to an invasive and costly audit. Thus the ATO achieved a certain level of cooperation immediately. Through the review, the ATO proceeded to check various details such as the wages paid compared to turnover or the number of staff present, or the number of tablecloths washed compared to the laundry bill. Such checks helped tackle the cash economy since some employees were being paid cash and were not officially on the books. The real time reviews were successful in achieving the long-term compliance with respect to a number of measures such as the number of on-time lodgments and taxes paid.

« *What we ended up was creating something called a real-time review which is basically an opportunity to visit a business, explain what we are GRLQJ DQG DOPRVW JLYH DQ RSWLRQ WR we might need to do an audit, that is going to be quite intrusive and costly. You would have to get an accountant, or you can just agree for us to drop in unannounced over the next few months, just once or twice or three times over*

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and emerges from them (Foucault 1977). This implies that *savoir* goes through a process within each institution before it is used. The ATO will need to be careful that whatever process it uses to officiate its knowledge does not lead to its corruption and that there are no bias in its selection.

While the CCM takes into account and attempts to deal with the social causes of noncompliance, it continues to use deterrence measures for those who are determined to remain noncompliant. The noncompliance of these taxpayers may not be due to his or her circumstances, but rather due to some attribute within him h5(t)-4(s [(de)9(tu332(of)-3(pt)-4)55s

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