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## Intrusions That Just Drive Us Crazy

### **Publish Date:**

June 2019

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Maybe ASIC is trying to do to big public companies what the AFL is well on the way to doing to the game of Australian football.

Numerous and never-ending changes to the rules, ever-shifting interpretations of those rules by an ever-increasing number of umpires and tribunals, and now the introduction of "Behavioural Awareness Officers" patrolling through the crowd is a recipe for the destruction of a once-great game.

Players, coaches and most importantly AFL supporters now spend more time talking about the latest hare-brained scheme from AFL House than they do talking about the game of football. And this doesn't take account of the fact that it's impossible to attend a game of AFL football without being preached at by the AFL about climate change, identity politics or whatever is the latest *bien pensant* topic that's taken the fancy of the administrators. To know what Australia could look like in a decade one only needs to study the AFL today.

The decision of the Australian Securities and Investments Commission to have an ASIC-appointed psychologist sit in on the board meetings of ASX companies to monitor corporate "culture" is exactly the sort of stunt the AFL would try if ever the AFL were let anywhere near a public company. As was reported in this newspaper, at least one leading company had described what ASIC is doing as "stupid" because directors would of course change how they act while the psychologist was present. Stupid is one word for what ASIC is doing. Other words to describe ASIC's behaviour are dangerous and Orwellian.

It is gravely disturbing that it appears ASIC is trying to keep what it is doing a secret. It is not known to how many companies and to which companies ASIC has sent psychologists, although Qantas, Woolworths and AMP have been named. When the psychologist engaged by ASIC was asked by *The Australian Financial Review* to comment on her work she replied that she couldn't because of confidentiality agreements. There are so many problems with what ASIC is attempting to do that it is hard to know where to begin. Not the least of difficulties raised by having a government-enforced psychologist being in attendance at a board meeting is that even if they say nothing, their mere presence ultimately makes them complicit in the board's decisions. Blurring the line between the decisions of a private organisation and the actions of a government regulator violates the rule of law. Furthermore, it's impossible to have democratic and transparent oversight of ASIC if they're conducting such operations in secret.

What ASIC is doing is exactly the sort of behaviour by regulators that is documented by a research paper from the Institute of Public Affairs released last month. *Regulatory Dark Matter – How unaccountable regulators subvert democracy by imposing red tape without transparency*

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examines how ASIC, the Australian Prudential Regulation Authority, the Australian Competition and Consumer Commission, the Australian Accounting Standards Board, and the Auditing and Assurance Standards Board used not just legislation, but regulation, and quasi-regulation in the form of guidelines, policies and directives to increase the burden of red tape on business.

One measure of red tape, which is simple but admittedly broad-brush is the number of pages of legislation regulating an activity or an organisation. The above-mentioned five regulatory agencies are empowered to act under a total of 9520 pages of legislation. But these agencies also have powers under another 75,970 pages of regulations and quasi-regulations. For example, ASIC operates under 2900 pages of legislation, in addition to 2750 pages of regulations and explanatory documents and another 8260 pages of regulatory guidance. Presumably somewhere in nearly 14,000 pages of law and regulations, ASIC has divined that it has the power to send psychological commissars to sit in judgment of the actions of company directors.

It's absolutely no wonder that red tape costs the Australian economy \$176 billion a year and is now the nation's largest industry. And surely red tape is part of the explanation why new private sector investment in the economy is lower than during even the Whitlam era.

Sending in psychologists to company board meetings might make the staff of ASIC feel better about themselves, but it won't do anything to solve this country's red tape crisis.

**Original Link:**

<https://www.afr.com/news/economy/intrusions-that-just-drive-us-crazy-20190620-p51zki>

**Originally published in:**

Australian Financial Review