In announcing new money for the Australian Securities and Investments Commission, the Treasurer and the Minister responsible Kelly O'Dwyer executed a synchronised back flip with tuck, declaring that

"The broad reform measures will equip ASIC with stronger powers and funding to enhance surveillance capabilities better enabling our corporate watchdog to combat misconduct in Australia's financial services industry and bolster consumer confidence in the sector."

This largess is in sharp contrast to the approach taken under previous minister, Matthias Cormann, as deputy Steve Ciobo explained when removing $120 million from ASIC's budget

"The Government thinks that there is scope for the financial services industry, and for all the other industries, to self-regulate more ….There will always be (as a general statement of principle) our preference for self-regulation over the need to have a regulator [that is] tax-payer funded intervening in the field."

For a government that is ideologically wedded to the idea that "throwing money" at a problem does not necessarily solve it, this is a pretty impressive about turn.

The Treasurer's press release went on

"The Turnbull Government recognises that our financial system touches the lives of every Australian family and business and that our banks have not always lived up to the standards we expect. That's why we are continuing to act to ensure our regulators are tough cops on the beat with the resources and powers they need to respond to misconduct and prosecute those who seek to take advantage of consumers."

It is this “tough cops on the beat” phrase that will raise some eyebrows.

Because let’s face it, as a financial regulator ASIC has been a great spectator, rather than patrolling the beat, catching the crims.

If it wasn’t for journalist Adele Ferguson and overseas regulators, ASIC would have detected absolutely none of the misconduct in the banking system they are supposed to ferret out. And their record of prosecuting major cases is also pretty miserable .

However, not all of this is ASIC’s fault.

It should be remembered that ASIC is not solely a financial conduct regulator, but is the corporate regulator and every time there is a corporate crisis, such as the winding-up of Clive Palmer’s Nickel refinery, ASIC gets called in. And as the calls increase, its funding gets cut.

ASIC lacks clout, because it is being asked to do too much with reduced resources and that is the fault of successive governments.

And it has to chase suspects that have considerable more clout than it and the ear of government – the banks.

Nothing illustrates the disparity in power more than the pathetic plea by ASIC Chairman, Greg Medcraft, before Senate Estimates for banks to “plead guilty" in the BBSW manipulation case, which, of course, the banks have no intention of doing. They are quite prepared to wait it out (because they are doing it on shareholders and taxpayers’ money). As Mr Medcraft warned

“The delay in some of these things is because the statute of limitations eliminates causes of action …So you sometimes get a bit sceptical because the longer you are taking, the less charges we could lay against you.”

At the Senate hearing, Mr Medcraft, to his credit, did not blame funding cutbacks saying “governments have given us this money to be there to not be reluctant to take action on behalf of Australians”.

So if money is not the cause of the failure to prosecute banking misconduct, what may be the reason?

Attached to the funding announcement, there was a slew of documents arising from an independent review on ASIC’s “capabilities”, which has been sitting on the Treasurer’s desk since the end of last year.

The review titled “Fit for the Future” is interesting reading and ASIC has not scored highly, in fact the expert panel who undertook the review concluded that:

“The effectiveness and efficiency of ASIC’s capabilities vary widely across the range of areas assessed.”

While a few of the regulatory capabilities are “in line with or at the forefront of global best practice”, there some areas where ASIC’s approach is similar to the practices of peer regulators. However, while some practices are in line with those of most other regulators, [they] are still “behind where they will need to be to ensure that ASIC is fit for the future”. The Review Panel found a number of areas “where ASIC’s capabilities show material gaps to what the panel considers to be good practice, and where improvement is required without delay”.

“These include ASIC’s governance model and leadership related processes, its IT, data infrastructure and management information systems (MIS), for measurement and reporting of internal efficiency in management dashboards, and its approach to stakeholder management.”

Basically the panel is saying that the management of ASIC is sub-standard and ASIC is not “fit for purpose”.

It is not the time to apportion blame as deficiencies in such areas take many years to come to the fore. These are cultural issues that affect the way the organisation operates. And chucking money at such problems won't fix them.

The panel noted one area which they termed the "expectations gap" which was much "greater than expected"

This is basically how ASIC sees the job it is supposed to be doing as opposed to the [expectations of external stakeholders]
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As part of the review, PWC was engaged to do surveys of a wide range of external stakeholders including "private sector businesses regulated by ASIC, peak bodies, consumer groups, academics, and regional representatives". They also surveyed ASIC management.

The review makes interesting reading. For example while only 23% of the external stakeholders thought that "ASIC is proactive in identifying risks in the financial system", 95% of ASIC management believed they were proactive enough. And while only 16% of external stakeholders thought that "ASIC uses its resources well", 75% of ASIC management disagreed. Interestingly 75% of ASIC management thought that the regulator "understands businesses' needs", but 24% of the rest of the world did not think so.

Under siege

ASIC displays all classic hallmarks of an organisation under siege, retreating into a corporate groupthink which believes everyone else is out of line but them.

The review panel made 34 recommendations for change but emphasised

"While the Panel consider all 34 recommendations to be complementary and important, those relating to Governance and Leadership are the most critical and enduring and therefore matter most."

The panel then outlined a raft of proposals to reorganise ASIC from the top down.

"The Panel considers that there is a substantial agenda of strategic issues to be addressed by the Commission over the next three years, and that this will require their full-time attention, undistracted by direct involvement in managing day-to-day operational issues. These strategic issues cover the implementation of the internal governance changes; strategy setting; capabilities improvement; cultural transformation; change management and effective external stakeholder engagement."

Given the urgent need to overhaul the culture of ASIC, which will take several years, it is surprising then that the ministers announced that the Chairman's term would be extended for only 18 months as opposed to the normal 3 years. Hardly time to get the important changes started never mind completed.

The minister also announced that a new post would be created:

"To further support Mr Medcraft and the ASIC Commissioners in their important work, the Government also intends to appoint an additional ASIC Commissioner. This new Commissioner will have experience in the prosecution of crimes in the financial services industry."

It would be interesting to know whether this new Commissioner was, in fact, in the frame for Mr Medcraft's job, but has been asked to cool his heels for 18 months before ascending the top role.

If so, that does not bode well for badly needed efforts to reorganise the Commission.

ASIC, and by extension the Australian regulatory system, is broken and patching it up yet again only kicks the problem down the road, to another government and another inquiry, possibly a royal commission.

In the meantime, the independent ASIC Review Panel should be congratulated for an excellent and insightful report. As they have found that one regulator is somewhat unhinged from reality, maybe the Minister should institute a similar Capability Review of APRA. It has been equally supine in the face of banks and lately insurers for which it has regulatory responsibilities.

Read more http://theconversation.com/government-backflip-on-asic-could-be-too-little-too-late-58210