

Hayne takes swipe at MPs' 'language of war'

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Royal Commissioner Kenneth Hayne. Picture: Eddie Jim

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Royal Commissioner Kenneth Hayne has delivered a withering criticism of modern political parties and politicians who “resort to the language of war” and contort facts while overseeing failures in public policy that result in calls for royal commissions.

In a speech delivered to Melbourne University’s 2019 Constitutional Law Conference in July, which has been published now, Mr Hayne gave a scathing review of contemporary political debate by both the Coalition and Labor, while lamenting that politicians could be seen to be “captured” by corporate and vested interests.

The first substantial comments from Mr Hayne since the banking royal commission grapple with the decline of trust in institutions, prompting the former High Court justice to suggest greater transparency in arms of government and advice from the public service and more scrutiny of lobbyists and interest groups.

While offering “no answers” to the issues he raised, Mr Hayne attempted to explain why the public has resorted to royal commissions to fix systemic problems in public policy.

“The increasingly frequent calls for royal commissions in this country cannot, and should not, be dismissed as some passing fad or fashion. Instead, we need to grapple closely with what these calls are telling us about the state of our democratic institutions,” Mr Hayne said.

Mr Hayne handed down 76 recommendations to clean up the banking and financial services sector in February after a year-long royal commission. But under the pressure of an intense lobbying campaign by the mortgage broking industry, the Morrison government caved on a proposal to ban lucrative commissions from the sector almost immediately, while Labor also watered down its plans to implement the recommendation.

Last month Prime Minister Scott Morrison also warned the government would not be rushing through legislation stemming from the inquiry due to the need to undertake careful and considered implementation of the reforms which required vast amounts of industry consultation.

Financial planning groups have also complaining that a move to ban grandfathered trailing commissions — which the industry has been on notice to phase out since 2013 — were being rushed despite being given a further 17 months to comply with the new laws.

Mr Hayne said trust in all sorts of institutions, governmental and private, has been “damaged or destroyed” and painted a picture where the meticulous work of royal commissions contrasted greatly with the political process.

He said one avenue to restore trust could be more transparency and scrutiny on branches of the government and political parties when they are in office “with a view to revealing more about advice to government”.

“And it would be necessary to reveal more about what the lobbyists and interest groups are telling government,” Mr Hayne said, while at the same time questioning whether more information would be useful for public debate when too often facts were contorted for political objectives.

While royal commissions were characterised by “independence, neutrality, publicity and reasoned reports”, Mr Hayne said this “contrasted” with the public view of modern politics.

Political debate was often characterised as having an “emphasis on party difference, and with decision-making processes that not only are opaque but also, too often, are seen as skewed, if not captured, by the interests of those large and powerful enough to lobby governments behind closed doors,” he said.

“Reasoned debates about issues of policy are now rare. Three or four word slogans have taken their place,” Mr Hayne said.

“Political, and other commentary focuses on what divides us rather than what unites us. Conflict sells stories; harmony does not. And political rhetoric now resorts to the language of war, seeking to portray opposing views as presenting existential threats to society as we now know it,” he said.

Mr Hayne’s speech followed concerns aired by former Victoria Shadow Attorney-General John Pessuto about the rising number of royal commissions and what it implied about public faith in the institutions of government.

“The immediate answer to that question may be that it shows that those structures — legislative, executive or judicial — are not working as they should,” he said. “If they were, why would we want or need so many royal commissions?”

Mr Hayne said royal commissions gave a “sense of vindication” to victims who have been given the opportunity to have their concerns heard and that it enables those being investigated to give a “real measure of public accountability.

He said the work of royal commissions could be described in a few words: “Independent; Neutral; Public; and Yielding a reasoned report.”

“It may well be thought that our governmental institutions are framed on the premise that there can and will be reasoned debate about the merits of competing policy ideas. If that is right, does the premise remain valid? We seem unable to conduct reasoned debates about policy matters,” Mr Hayne said.

“Policy ideas seem often to be framed only for partisan or sectional advantage with little articulation of how or why their implementation would contribute to the greater good.”

Mr Hayne said royal commissions were often being asked to look into failures of public policy and institutions of government.

“Notice how many recent inquiries relate to difficult issues of public policy: how can we, how should we, look after the aged? How can we, how should we, respond to mental health?” he said. “Some are more particular. Has the course of criminal justice been deflected by the way in which a lawyer provided information to police?”

“Does reference of matters of these kinds to Royal Commissions suggest that our governmental structures can deal effectively only with the immediate spot fire and cannot deal with large issues?”

But Mr Hayne warned it may not be a good idea for the government to replicate the work of royal commissions.

“To do that would require revealing more of the inner workings of government and would require revealing how, and why, policy choices were made. Hence, it would be

necessary to reconsider the relationship between the political branches of government and the public service, with a view to revealing more about advice to government.”

Mr Hayne said royal commissions went to the heart of failures in the apparatus of government and the structure of public policy.

“These are the kinds of issues that I think lead to the strength and frequency of public appeals for Royal Commissions. All of them are issues about the way our democracy is operating and the premises that underpin the structures of our government,” he said.

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