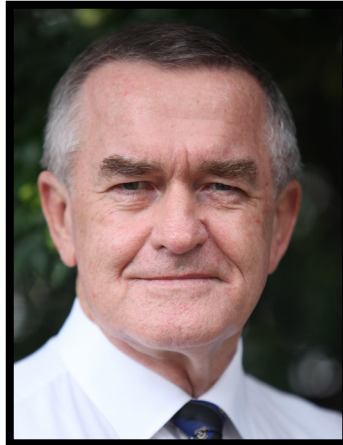


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GREG McMAHON

**INDEPENDENT SENATE CANDIDATE for QUEENSLAND
FEDERAL ELECTION - 2 JULY 2016**

Senate Inquiry into flood and disaster issues ‘essential’

Queensland Independent Senate candidate Greg McMahon said if he was elected to the Senate on July 2 he would move for the establishment of a Senate Inquiry into the conduct of recent flood inquiries in Queensland.

“Such a Senate inquiry would fill the void left by the absence of an Upper House in Queensland’s Parliament,” Mr McMahon said.

“Flood engineering is my technical specialty,” Mr McMahon said.

“Observations that I have made, and information given to me by victims, academics, lawyers, journalists, local government politicians, fellow professionals and others raise serious matters that I must leave to that inquiry to consider.

“Whether or not certain concerns can be sustained at such an inquiry, the considerations derived therefrom would assist Australian jurisdictions to review and reform the way that dams and floodplains are managed, as well as review and reform the ways that judicial inquiries, particularly those about natural disasters, are conducted,” Mr McMahon said.

“Most lessons may come from an examination of what happened before, during and after significant events in the Brisbane River catchment over the last decade.

“But positive and negative aspects learned from inquiries and investigations in other South East Qld catchments, in the Callide and other locations, should add to the review and reform process as well,” he said.

Mr McMahon said that his proposal for a Senate investigation into the flood inquiries and investigations would cover the establishment of those processes, their conduct both as judicial and scientific processes, and the response by government to their findings, with or without the prospect of class actions against the government.

As a first issue, public submissions would be invited on the way that inquiries and investigations should be established, who should be appointed to head such inquiries, and whether flood experts or flood agency administrators should be appointed as sole or joint commissioners or heads of these examination processes," Mr McMahon said.

"Submissions would also be sought into how claims of perceived conflicts of interest (or other criticisms of appointments) of Commissioners, Counsels Assisting, Chiefs of Staff/General Managers, technical experts or other influential positions within inquiries should be addressed.

"The criteria as to whether technical experts to be used by inquiries are 'independent' or 'sufficiently independent', and the processes to be followed where such criteria cannot be met, need to be examined.

"This is vital to the capability of inquiries to gain the confidence of stakeholders involved in floods and other natural disasters," Mr McMahon said.

"In the case of recent inquiries and investigations, and for future reference, the question as to whether the technical consultant for these types of inquiries should have been a hydraulic engineer or a hydrologist or a risk management specialist, or a multidisciplinary team, is an issue that needs consideration," he said.

"The terms of reference for these inquiries, and any need to expand or change these terms as matters are uncovered ... are vital issues for securing confidence in such inquiries. How should these criticisms be addressed ... what can be achieved before an inquiry is started, or during the inquiry?

"For example, inquiry into the vulnerability of the Wivenhoe Dam to overtopping and dam-break failure may not have been within the terms of reference of the 2011 inquiry. This may have been so even though this vulnerability may have been a basis for decisions made, at all levels of government, before and during the flood.

"If this was the case, it may mean that while the symptoms of any fear of dam failure may have been the subject of investigation, the cause of that fear may have been excluded," Mr McMahon said.

"And the roles and responsibilities of the principal appointments to inquiries and investigations may currently be matters for each inquiry to derive for itself.

"If a definition of these roles and responsibilities is not pre-determined or published, who then, the Senate could legitimately inquire, is accountable in the public interest for insufficiencies or errors in the conduct of an inquiry that becomes subject to discontent or to allegations?

"There are very serious issues at stake here," Mr McMahon said.

"The conduct of these inquiries and investigations should also be reviewed. Lessons learned of benefit to future inquiries into floods and natural disasters, for example, could include how the

victims are treated in those inquiry and investigation processes. Should victims, individually or as a group, be given standing before such inquiries, and have legal representation ... or not?

“Should flood victims be given access to technical experts?

“Victims of flooding in Brisbane reported that when they approached consultants for advice, all the consultants they contacted were already working for the government agencies, State and Local.

“Should government agencies be able to withhold from victims technical information as simple as the size of the storage behind the Dam at different water levels, on grounds of security?

“Should government agencies be required, for public inquiries, to submit to some process the concerns about any terrorist threat and or how such technical information could constitute a security threat?

“Recent disclosures by professionals from Crown Law may indicate that government no longer behaves in court proceedings as a model litigant.

“Other whistleblowers have alleged instances in other types of investigations where agencies may have denied everything and delayed processes, as was claimed by the Crown Law officers on insurance matters.

“A Senate Inquiry could confirm the circumstances when the security issues may be real for, say, storage volume data for a dam, rather than an alleged ploy to deny and delay participation by victims in investigations or inquiries.

“Further, do published submissions retain privilege, or can government watchdogs, retrospectively, discipline professional practitioners and technical experts for submissions made during an inquiry?

“If the answer is 'Yes', a Senate Inquiry could consider whether the law should be amended, and privilege restored.

“What about submissions that are published by inquiries, and a period later are redacted or withdrawn by the inquiry from publication?

“If something is published, how can it be unpublished?

“Can the inquiry withdraw privilege or other protections if the inquiry withdraws publication?

“A Senate Inquiry could also consider when a criticism by a technical expert of a report by an Inquiry is a public interest disclosure, and when is it an insult to the Inquiry and thus open to prosecution.

“Should warnings of prosecution be used by inquiries or investigations to encourage witnesses or experts making disclosures to amend their submissions, or should the processes of submission - redaction-publication be separated from transactions about prosecutions?

“Is there a need for further protections for witnesses, their advisors and representatives against actions that might be taken against them by an inquiry as well as by third parties, or are existing protections sufficient?

“Submissions made to a Senate Inquiry into any matter may give the Senate, in its constitutional role as the Grand Inquest of the Nation, the opportunity to provide guidelines in the public interest on how inquiries should be conducted,” Mr McMahon said.

“A special aspect of the conduct of inquiries into subjects such as flooding is how the legal professionals and their methods of inquiry might be integrated with the scientists and their scientific methods, so as to achieve a satisfactory outcome,” he said.

“The Azaria Chamberlain court proceedings demonstrated how the role of scientists can be diminished when the evidence (in this case the traces of ‘baby blood’ taken from the family’s car) is destroyed.

“The destruction denied to the scientists advising the Chamberlains the opportunity to do their own tests of the substances.

“As a result, the scientific debate in the Court was not about two sets of test results. The debate was forced into a contest of expert scientific opinions about what the results would have been if the evidentiary material had not been destroyed.

“Instead of scientific analysis of those slides deciding the evidence directly, the legal processes may have determined the matter simple-mindedly by adding up which side had more expert opinions.

“The Inquiry into the 2011 Brisbane flood found that the flood Manual had been breached regarding the use of rainfall forecasts.

“To date, the government has not reported any modelling study as to what would have happened if the Manual had been followed. This has forced the scientific debate into a contest between expert opinions about what the impacts would have been, when modelling would have provided that comparison directly.

“The Senate Inquiry may provide the modelling study necessary to return the scientific debate to a comparison of flows rather than a counting of experts.

“The Senate may also be able to represent, both to technical associations with members involved in matters under inquiry, and also to professionals within government agencies which are under inquiry, what the public interest may expect from those members and those professionals in responding to the technical issues enlivened by a disaster of any kind,” Mr McMahon said.

“A major difference between the legal profession and the scientific professions may exist regarding the understanding of what constitutes a conflict of interest.

“Perceived conflict of interest situations may draw submissions from stakeholders across the spectrum of victim – technical professional – technical consultant – government agency.

“The response by government to Inquiry outcomes is a principal issue,” Mr McMahon said.

“A Senate Inquiry, in its constitutional role of Grand Inquest of the Nation, particularly for a state like Queensland that no longer has its own Upper House, could also inquire into the response by Government to the recommendations and referrals made by those Inquiries,” he said.

"I did not see the upgrade of Wivenhoe Dam on the list of priority infrastructure proposed by the Queensland Government earlier this year," Mr McMahon said.

"The risk posed by what the now Chief Justice described as the most dangerous piece of public infrastructure in Queensland may already be slipping from the government's mind.

"Where Inquiries recommended further investigations, were these carried out, and if not, what were the reasons?

"The Wivenhoe Dam and Somerset Dam Optimisation Study conducted by government in 2014, for example, may not have carried out a review of the use of rainfall forecasts in the operation of dams during major flooding," Mr McMahon said.

"That Study left it to potential future research.

"A review of the use of rainfall forecasts was a recommendation of the inquiry into the 2011 Brisbane River flood.

"A Senate Inquiry would test whether or not importing the expertise of risk management consultants into the technical review could resolve the issue now," Mr McMahon said.

"Queensland government agencies may currently be vetoing the use of rainfall forecasts in the operation of its dams.

"So, is there a contradiction here for Federal agencies, such as the Bureau of Meteorology, whose recent product advertisements appear to be incorporating rainfall forecasts into their flood forecasting capabilities?

"Have matters that have been referred to proper authorities by inquiries and investigations been investigated by those authorities, or have those authorities investigated, in lieu, other matters that were not referred to them by those inquiries?

Mr McMahon added: "The public interest in these issues cannot await the completion of class action, or trust it to class actions to deal fully with the technical issues involved.

"Class actions, for instance, may be settled out of court.

"A Senate Inquiry into these issues is not only appropriate, it is essential," Mr McMahon said.

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