Speech By

Michael Berkman

MEMBER FOR MAIWAR

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PROPERTY LAW BILL

Mr BERKMAN (Maiwar—Grn) (5.55 pm): Wow! Did anyone anticipate such an impassioned contribution as that from the member for Bundaberg? I can only plead with the Leader of the House to please afford us more time in the business program motions in coming weeks so that we might be taken on such extraordinary, historical, discursive journeys in the future. Phew!

I rise to give my contribution on the Property Law Bill 2023. It will include far fewer references to the House of Lords than we have just heard from the member for Bundaberg. As my colleague from South Brisbane has already indicated, we will be supporting this bill because it contains largely positive administrative changes to the property law regime and takes small steps towards properly regulating building management statements, or BMSs as they are known. As is often the case, there is a lot this bill does not do, in our view, particularly when it comes to disclosure requirements. As the member for South Brisbane has indicated, she will be moving amendments to ensure prospective owners and renters are informed of flood risks and to require the disclosure of BMSs that remain unregulated and often incredibly dodgy and unfair for the residents they affect.

Last year, my electorate, as so many other members in Brisbane can relate to, experienced catastrophic, deadly flooding. Many people lost virtually all their possessions and had their homes destroyed or cut off from power for weeks. The clean-up and recovery effort was a heartwarming demonstration of community solidarity and community spirit, but it is not something that any of us would like to go through again, obviously. For some people, if they had known that this was a possibility in their residences—for example, if they had known the impacts of the 2011 floods on their home before they moved in—they may have chosen to take mitigation measures to prevent that level of damage or to simply avoid that residence all together. However, places that were completely inundated 18 months ago now can be advertised and sold or rented without any disclosure of historical flooding, or any previous impacts of natural disasters like bushfires or storm surge, for example. For the government and their mates in the Real Estate Institute of Queensland to justify this by placing the onus on renters to do their due diligence is, in my view, unacceptable, especially when we are talking about people's lives and livelihoods.

While the government develops a robust uniform risk assessment and disclosure scheme, which it says it is doing as recommended by the Royal Commission into National Natural Disaster Arrangements, it is not difficult or unreasonable to expect that this historical information is included as part of mandatory disclosure processes. That is why my colleague, the member for South Brisbane, will move an amendment to this effect. Her amendment also ensures renters will get this information, too, because, as the major parties seem often to forget, a rented home is a renter's home. They equally deserve to know the risks they face there.

I just very briefly observe that this is not new. I can reflect back more than 10 years ago now when I was working in the Office of Climate Change—pre-Newman, of course, before it was gutted—when the Premier's Council on Climate Change did some excellent work in the wake of the 2011 floods

and Cyclone Yasi, looking at natural hazard risk preparedness within the planning system. Disclosure of these risks was considered in some detail there. Recommendations were made to the Premier's Council on Climate Change, but we still see no meaningful progress in this space. I would say it is well overdue now.

The member for South Brisbane will also move an amendment requiring that building management standards, BMSs, be disclosed to potential buyers of any unit, new or existing. A few years ago, I started hearing from residents in apartment buildings around my electorate who had, as it turned out, these incredibly unfair and rigged BMSs in place. For those of us who are lucky enough to be unfamiliar with BMSs, here is a snapshot of how they work.

Decisions about the building under a BMS are made by a building management group whose members and voting procedures are determined entirely by the BMS itself. Before a developer sells units, they can register the legally binding BMS under the Land Title Act. That gives them almost total control over everything that happens in that building by retaining a veto on the building management group, which supersedes the body corporate. The developer under a BMS can exclude residents from decisions about the building including fire and safety upgrades and other maintenance. They can avoid obligations to remedy defects and can set up deals to enrich themselves and their associates under a BMS. If they cut corners with construction, which we know dodgy developers do—and the government still refuses to rein them in with a development licensing scheme—they can simply ignore the problems including until warranty periods expire. They can even void the building insurance by failing to address defects or do proper maintenance, leaving the residents themselves exposed to millions of dollars in repairs.

In my electorate the developer of a mixed-use building in Toowong has given itself that kind of absolute power—complete power over all votes on the building management group. This developer owns all the commercial spaces and a single residential unit but has not paid a cent in maintenance for the commercial spaces. Instead, this BMS forces the residential unit owners to cover all the maintenance costs for the entire building, including the developer's commercial holdings. God only knows where their money is going because the developer refuses to conduct even basic maintenance at the property.

While residents pay around $6,000 in levies each year, the developer has leased dedicated visitor car parks in the building to themselves for $1 and then presumably sublets them privately for significant profit in the middle of Toowong. Lily and Carlos, two neighbours in this building, are still fighting to get out of their ridiculously unfair BMS that gives the developer effectively dictatorial power over the management of their homes. If unamended, this bill will do practically nothing to help them and the countless other Queenslanders stuck in their position. There is currently no requirement for BMSs to be disclosed to potential buyers nor is there any requirement to share building management group records or financial statements.

Although this bill finally creates a requirement to disclose proposed BMSs for lots sold off the plan, it does not propose disclosure requirements for existing lots. Far too many unit owners across Queensland have discovered these unfair agreements only when they find themselves in a dispute with the building management group and are then told they have no recourse to challenge the BMS because it is not covered by the BCCM commissioner or the courts, and that will remain the case under this bill.

Under the government's bill there are still no fairness requirements to register a BMS, meaning that developers can include any oppressive term they choose. This is especially dangerous when combined with the lack of statutory disclosure obligations for sellers and stands in stark contrast to analogous provisions for fairness under the BCCM Act. That is why the Greens will be moving these amendments to require disclosure of existing BMSs to prospective buyers.

Although it might be outside the scope of this bill, I am once again urging the government, for the sake of my constituents and no doubt thousands more like them across the state, to properly regulate BMSs like other jurisdictions have done. There should be a requirement for BMSs to fairly allocate costs, a process for disputes within BMSs to be resolved just like body corporate disputes, and the ability for owners to challenge an unfair BMS.

Very briefly, this bill also shifts the burden of providing disclosure documentation for community titles schemes to body corporate managers. While I welcome the clarity that this provides around responsibility for disclosure, I am concerned about this change being made in the absence of any accreditation requirements for body corporate managers. As many submissions noted, we have no guarantee that body corporate managers are competent in the responsibilities they currently hold, let alone these new disclosure responsibilities. I think many people will have had an experience dealing with a dodgy or ineffective body corporate manager despite the significant power they hold over unit owners' homes and lives. If the government is going to make body corporate managers responsible for

disclosures to unit buyers then I agree with the Strata Community Association of Queensland's recommendation that the government should create a regulatory regime to ensure that body corporate managers meet certain professional standards and can perform all of their responsibilities properly.

In closing, there are plenty of reasonable amendments in this bill, hence our support for it. However, it should do more to ensure prospective tenants and buyers are informed of important information about a property that includes any building management statements on a property, whether new or existing, and especially while many of these arrangements are unregulated and deeply unfair. It should also include the history and risk of weather and disaster impacts like flooding.