BUILDING SERVICES (REGISTRATION) BILL 2010

Third Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [3.11 pm]: I move —

> That the bill be now read a third time.

In so moving, I remind members that in the committee stage two items raised by Hon Ljiljanna Ravlich were under discussion. I undertook to provide some information prior to the bill being read a third time, and I now do so. The first item was that Hon Ljiljanna Ravlich requested information regarding whether the term "hold out or imply", in clause 6 of the Building Services (Registration) Bill 2010, has ever been determined by a court. Indeed it has, and I am sure that members will be generally interested in this information as well as dealing with the specific query. The term "hold out or imply" is a commonly used phrase in occupational licensing legislation in Western Australia and other state and international jurisdictions. Some recent acts in which this exact term has been used in Western Australia include the Medical Radiation Technologists Act 2006, in which it appears in section 83; the Occupational Therapists Act 2005, in which it appears in section 86; and the Pharmacy Act 2010, in which it appears in section 60. Several other occupational licensing statutes, including the current builders and painters registration acts—which, of course, we are in the process, through this bill, of repealing and replacing—make use of variations of that term. Some of those statutes include the Architects Act 2004, the Real Estate and Business Agents Act 1978, the Veterinary Surgeons Act 1960, the Travel Agents Act 1985 and the Finance Brokers Control Act 1975.

The term "hold out or imply", and its variations, is crucial to the enforcement of licensing and registration legislation and, as a consequence, is tested frequently in prosecutions relating to unregistered or unlicensed activity. This term has not been the subject of dispute in the courts or caused any significant practical difficulties in the enforcement of the acts that I have mentioned. However, a couple of examples of case law involving the use of the term "hold out" from some WA Supreme Court proceedings are, firstly, Bromley v Bembridge in 2002, in which the observation was made —

> Now, he does not need business cards, advertising, and such things, all of which, of course, would make it more obvious, but certainly are not necessary, and it doesn't matter that he didn't call himself a travel agent. It is rather a matter of what he holds himself out as capable of doing."

The second case to which I will refer is Legal Practice Board v Ridah in 2004, in which it was advanced as follows —

> "… whilst not a certificated practitioner, I held myself out as such during the period between June 2001 and March 2002 …

I thank the honourable member for raising that question. I believe that that provides a full response.

The second and last matter that was raised by Hon Ljiljanna Ravlich during the committee stage was a request for a comparison of penalties between the Builders' Registration Act 1939 and those proposed under the Building Services (Complaint Resolution and Administration) Bill 2010 and the Building Services (Registration) Bill 2010, which we are currently dealing with. The comparison has been done, and I have a table with me which runs to about four pages of those comparisons and which I now table in response to the member's query.

In conclusion, I thank members for their support up to this stage for this bill and the others that accompany it, and I look forward to their support for the third reading.

[See paper 3316.]

Question put and passed.

Bill read a third time and returned to the Assembly with amendments.