



**FAMILY LAW AMENDMENT (SHARED PARENTAL RESPONSIBILITY)  
BILL 2005  
Second Reading  
1 March 2006**

[Ms GRIERSON](#) (Newcastle) (4.10 p.m.)—I rise to speak on the [Family Law Amendment \(Shared Parental Responsibility\) Bill 2005](#) and to support the amendment put forward by the member for Gellibrand. This legislation introduces major changes to the Family Law Act, and much of it has been developed as part of the government's response to the 2003 House of Representatives Standing Committee on Family and Community Affairs report *Every picture tells a story*. I understand from the Labor members who were part of that committee inquiry just how moving it was for the committee members, how involved they were and how determined they were to bring about change.

The key changes to be made under this legislation include introducing a presumption of shared parental responsibility; requiring the court to consider equal significant and substantial shared time with both parents; introducing compulsory mediation before litigation, with limited exceptions; introducing less adversarial court processes for cases involving children; promoting parenting plans, agreed between parents without lawyers; and providing the legislative basis for a major increase in family relationship services through the creation of 65 family relationship centres. I note and welcome that one family relationship centre is being established in my electorate of Newcastle. With a higher than state average divorce rate, it certainly is needed. The legislation also introduces other changes, including new penalties for non-compliance with orders, for vexatious complaints and for false allegations of domestic violence. We on this side of the House support the increased expenditure on family support services and the government's attempt to respond to the issues raised in the *'Every picture tells a story'* report. However, we—and I certainly—have some reservations about this legislation which need to be examined.

Firstly, we must ensure that the tender process for the family relationship centres is open, transparent and accountable. I have some major reservations about the amount of outsourcing of services by this government to private service providers. As Deputy Chair of the Joint Committee of Public Accounts and Audit, I can assure the House that I have seen just how problematic in the delivery process many government contracts can be. We do not want a situation whereby a few major companies are competing with each other for potentially lucrative contracts, driving down costs but also driving down the

quality of the service they provide. As a regional member, as the member for Newcastle, I do not want to see smaller local service providers cut out of the process, denying our community the local knowledge, experience, commitment and expertise that they bring. I have pointed out many times in this place the major problems we have found with contracts—for example, with those arranged by the Department of Immigration and Multicultural Affairs for migrant services in my electorate. I think there are some lessons to be learned.

We need these family relationship centres to be properly supported and resourced, to be of very high quality, to be correctly placed and certainly to be adequately regulated. Quality is what we are after. We must also realise that these family relationship centres are not going to make up for the damage that the government is doing to family relationships with its policies in other areas—that is, measures like its completely family-unfriendly work choices legislation and its ongoing failure to make child care affordable and accessible to ordinary working families. Family relationship centres are a fair start, but there is so much more that the government could do to support family relationships before they break down or to prevent them breaking down.

So Labor does support the broad aims of the bill and we agree that parents should be encouraged to take more responsibility for their children. But it should never be just a case of dividing that shared time fifty-fifty. It is about dividing responsibility, it is about dividing and apportioning care on the ability to deliver that care in a sustained, responsible and loving way.

We support the prioritising of children's needs following family breakdown. This has been and must continue to be a key concern. When we are dealing with children after family breakdown it always requires expertise—expert judges and expert counsellors. We cannot accept a lesser solution. Cases that proceed to the Family Court after all are the ones that in many ways present with multiple and complex issues. They are often entrenched, insoluble and the result of major disorders and dysfunctions. With this in mind, I am pleased to see the government has backed down and supported Labor's call for family law to recognise parental obligations to children and not simply focus on parental rights.

As always, the member for Gellibrand has clinically examined the government's legislation and shown how it can be improved. I would particularly like to acknowledge and thank her for her work on this legislation, and I am pleased to support the second reading amendment that she has proposed. In doing so, I would like to point out other reservations that I have with this legislation.

While I support the aim of encouraging involvement from both parents, children must always be the first consideration. We should therefore focus more on responsibilities and quality care, and less on parental rights and a

division of time. Indeed, it appears that the government has been creating perhaps an unrealistic expectation that this legislation will create a right to equal parenting time. This legislation does not do that, and quite rightly so. There will never be, and can never be, a one-size-fits-all formula for dealing with relationship breakdowns and for dealing with the needs of children.

As an educator for 30 years and as a school principal for over 10 years, I have seen and dealt with the impact of family breakdown at the coalface. I know that simplistic, formulaic approaches do not work. I have seen outstanding parenting by all types of carers after family breakdowns, by actual blood parents, by grandparents, by single parents and by step-parents not at all related to the children and by both parents in the case of shared parents. But by the same token, I have seen heart-wrenching examples of terrible abuse and neglect of children by all those types of parents and guardians, whether it is mother, father, grandmother, aunty or step-parent. Those things happen and sadly it will always be a case of looking at the individual context and needs.

As I said, there is no formula. Children need love, care and security and our obligation to children is always immense. We just cannot reach for a calculator. Sadly, in our electorates, we do see cases where the calculator is very much out there, and it is often about gaining access to benefits—half a child equals half a benefit. That is the saddest type of approach to parenting.

One final note on Labor's amendment is that it calls for these changes to be properly reviewed to ensure they are both effective and keeping up with societal change. This is sensible and it should be adopted. I welcome the government's commitment to addressing family law issues through this legislation and I welcome the \$400 million injection into support services, including the family relationship centres.

However, as I noted before, there is still room for improvement. I particularly have some reservations about the penalties for vexatious parents. I can understand that you do not want to discourage parents from coming forward with the thought of having to pay a penalty if there is a suspicion they are not doing it legitimately. That is perhaps not the right deterrent but certainly there should be some deterrent. I am not sure that this gets it right but I am not sure what the solution is.

In fact, when we look at some of the reservations and room for improvement, in my electorate of Newcastle all these legislative improvements will not redress the difficulties that exist for families bringing matters before the Newcastle Family Court registry. I would like once again to bring the House's attention to an issue that I have been raising for quite some time—it is of great importance to my electorate—concerning the ongoing problem of the lack of a second Family Court judge in the Newcastle registry. I have raised this issue with the Attorney-General and with the administrators of the Family Court this year again and I would like to take the

opportunity to express my appreciation to the Attorney-General for his consideration of this issue. In response to my representations and those of the legal community of Newcastle, he has shown a good understanding of the needs of our city. But what we want is a second judge. We want him to stamp his authority on this issue and deliver that second resident permanent judge to the Family Court registry in Newcastle. I note that representatives from Newcastle Law Society and Family Law Society will be meeting the Attorney-General this week to further discuss the need for a second permanent Family Court judge. I remain hopeful that once they have had a chance to put forward our region's compelling case it will be looked upon favourably.

The Newcastle registry service is not only for families in my electorate. It serves the Hunter region. It also serves those in the Central Coast, in the south, in Kempsey to the north, Narrabri and Moree to the west and all points in between. It also serves the communities of Tamworth and Armidale where there are sittings of the Newcastle registry. Up until 1998 the Newcastle registry had two resident judges, but since one retired in that year it has been left with just one judge that is clearly and specifically appointed to our court.

It is clear that the amount of resources available to the Newcastle registry has distinctly fallen. In 1998 we had two resident judges and a full-time registrar. We now have one resident judge, two full-time federal magistrates and access to a minimal amount of registrar time. While it has been claimed that this amounts to an increase in total resourcing, I know from the legal fraternity and from constituents that two full-time judges are essential for the Newcastle registry. It is always the case that long, defended cases must be heard by a judge. The number of those cases, unfortunately, does not diminish in our region. Federal magistrates and Family Court registrars simply do not do that work.

To make up the shortfall, the Newcastle registry does receive some of the time of judges based in Sydney and Parramatta. However, this is clearly a second-rate option. It is expensive in terms of travel and accommodation for judges and staff and there is a feeling expressed by the legal community that these judges are often not as familiar with the culture of our region and certainly do not deliver the commitment to sitting times that is required. When they can get on a plane or a train or in a car and go back home to another city, that is what they do very frequently. It is also a second-rate option because it is clearly failing to provide the resources necessary for the caseload of the Newcastle registry.

The longer we have been without a second resident judge, the further behind our caseload has fallen. By late last year we found that matters being heard in Newcastle had actually commenced 25 months previously. That is over two years that families who are obviously already in significant distress are made to wait to have their matters heard. Anyone who has been in that

situation knows that emotions just build. They do not improve and, certainly, time is often a complication for the way these things are settled.

By way of comparison, matters heard in the Parramatta registry were commenced only nine months previously. Why this disparity? The Parramatta registry, serving a population roughly double that of the Newcastle registry, last year had six resident judges—double the number of cases but six times as many resident judges. I have been informed that one of Parramatta's judges has since been allocated to Brisbane. That does not make me feel any better. That does not help the families of Newcastle. It does not help the families of New South Wales outside Sydney, and it still leaves Parramatta five times over resourced compared to our registry. That judge should have been appointed to Newcastle.

I have also been informed that, while Newcastle was allocated an additional twenty weeks of judicial time in 2005-06, this will simply assist to bring the registry's resources up to the current level of need. It will still take around three years to deal with the backlog of cases before it. The court cannot simply be focused on disposing of older cases, and indeed it is not policy to do so at the Newcastle registry. You cannot prioritise cases or find shortcuts to these. All cases before the court need to be assessed upon their needs and dealt with thoroughly and according to legal considerations. The backlog of cases in Newcastle has become so appalling that I am advised that many cases are now being filed in Parramatta or Sydney, where the delays are not so great. While this may look like a solution and it may be leading to figures that show a decrease in the number of new matters in Newcastle, it is not good policy to force families from almost the Queensland border to the Central Coast to have to travel to Sydney to have their matters dealt with.

The legislation before us will see extra resources being provided to the family relationship centres to be established in Newcastle. However, a family relationship centre will never be a substitute for a properly resourced Family Court registry. A family relationship centre is not going to help the families waiting over two years to have their matters heard in the Family Court. I certainly would not like to be in their shoes.

The region served by the Newcastle registry needs this service desperately. The 2001 census tells us that 13.1 per cent of families in Newcastle are sole parents with children, around 8,000 families have an income of less than \$500 a week, 10 per cent of people are estimated to be living in poverty and there are 4,600 child support cases. In the areas around Newcastle—the rural areas of the Hunter, the mid-north coast and the tablelands area—these figures are similar if not worse.

I fully support the goals of the family relationship centres, but for those already in the system we need those extra judicial resources in the Newcastle registry of the Family Court. We need them for the future as well, because the state government has referred its powers over de facto relationship

matters to the federal system. Parliament will be dealing with that legislation soon. That will certainly have a dramatic impact on increasing the caseload of the Family Court.

My electorate represents 17 per cent of the state population but has 19 per cent of all divorces. It is believed that we have a significantly higher proportion of de facto relationships as well. The Newcastle registry will also have to deal with the consequences of breakdowns in these relationships in the future.

The Federal Magistrates Court is also taking on an expanded role. It is already dealing with bankruptcy, with immigration, trade practices and administrative matters no doubt to follow. It is clear that the Newcastle registry's workload will continue to increase. We must be ready to meet this challenge and provide the services that families across our region need.

In addition to the judicial resources I have referred to, we are also in need of extra physical resources in the shape of a new Federal Court building. As far back as 2002 warnings were being raised about the inappropriateness of the Federal Court facilities in Newcastle. I noted in the newspaper recently that Sydney's Family Court building was being prepared for a \$2 million facelift. If you have not been to the Sydney court, go and have a look. It reeks of leather and marble and wood. It is beautiful. Come to ours and you will see that we have only four courts and that our judges and magistrates have to walk across a public road and use a Supreme Court or state court in a different area of the precinct, which defies all security needs. You will also see lawyers trying to brief their clients in public areas. We have the highest incidence of attempts to bring in weapons through our secure areas, and we have been raising this for a long time.

It is now 2006 and the Newcastle courts have none of these 'good access, good security, excellent facilities' that I gather the Sydney Family Court is going to have, according to the Law Council of New South Wales. I understand that negotiations are currently under way for new purpose-built accommodation for both the Family Court and the Federal Magistrates Court in Newcastle. This is a welcome development, and it is long overdue. But I do have reservations again that any new building must be appropriate to meet the expected future growth of our courts. We do not want a band-aid solution. We currently have four courts available in Newcastle. I believe that if we were to move to accommodation that provided for, say, six courts, even this would be a stop-gap measure with no room for expansion.

It is now apparent that the funding for this new accommodation—bigger, so obviously at a higher rent—has to come out of the Family Court's existing budget. Their workload is increasing and their budget resources are going to be stretched, yet they have to pay for improvements in the Newcastle court out of their existing budget, with no separate budget allocation from this government. When I look at that surplus, I think, 'My goodness, don't give us

a cheap, second-rate option; give us an option that is paid for by a special budget allocation to make sure we get the best facility that is possible that caters for present, future and expanding needs.' When I talk about a Federal Court, it would be wonderful to think that a whole expansion of legal services in the federal magistracy would be built into our legal community. That is why a Federal Court would be most appropriate.

We need a specific budget allocation to allow for this improved accommodation so that cuts do not have to be made to the court's other activities. We have two pressing needs for the families of Newcastle and of regional northern New South Wales. Our Family Court needs another permanent resident judge and we need improved, appropriate and better accommodation for our courts. I know that the Attorney-General is considering these arguments on their merits and I look forward to a successful outcome for my electorate. I sincerely believe that he wants to tick off on this one. While the legislation before us today is a step in the right direction to improve the family law system, it will not mean much to the people of Newcastle, the Hunter region, the North Coast and tablelands areas if our Family Court is not adequately resourced.