Failure to Stop

s.52AB (NSW) *Crimes Act*

s.52AB(1) Fail to stop and assist after vehicle impact causing death

Maximum penalty: 10 years.

s.52AB(2) Fail to stop and assist after vehicle impact causing grievous bodily harm

Maximum penalty: 7 years.

Commenced: 13.2.2006

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	**Shumack** (33) (2008) 191 A Crim R 513 [2008] NSWCCA 311	s.52AB(1) s.52A(1)(c)	VG	5y NPP 3y 6y NPP 4y Total: 7y NPP 5y	AD	Nil record – minor traffic record	Fatally struck pedestrian crossing road – speeding, intoxicated and failure to keep proper lookout – slowed down then sped off without stopping – abandoned responsibility and moral culpability for driving offence high Prior good character – unlikely to re-offend – good prospects of rehabilitation On appeal: no error in taking into account failure to stop in assessing moral culpability in driving offence – no double punishment – sentence within range
2.	**WW** (17) [2012] NSWCCA 165	s.52AB(1) s.52A(1)	PG (10%) VG	FT 2 y 9m 7y NPP 4y Total: 8y NPP 5y	AD	2 x drive unlicenced – lengthy record for other offences	Strayed onto wrong side of road and collided with bike rider on straight road at 9am – using mobile phone – abandonment of responsibility – aware he had struck and seriously injured bike rider – failed to stop despite request of passenger - driving unlicenced Youth – some remorse – good prospects of rehabilitation

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
3.	**Adam** [2014] NSWCCA 265	s.52AB(1) s.52AB(2)	PG (25%)	Indicative: 2y 18m Aggregate: 2y 8m NPP 1y 8m	AD		Speeding on residential street at night – collided with rear of turning vehicle causing it to spin and strike tree and low brick wall – one passenger killed and one seriously injured – fled scene of offence leaving car engine running – approached police four days later – prosecution conceded driving negligent not dangerous and did not proceed with driving charges Remorse – difficult personal circumstances – metal health issues On appeal: consideration of nature of s.52AB offences – gravamen of offence is failure to stop knowing of death of GBH not nature of driving
4.	**Conte** (20) [2018] NSWCCA 209	s.52AB(2) s.52A(2) s.52A(4)	VG	Indicative 4y 11y 6m 6y Aggregate: 14y NPP 10y 6m	AA Indicative 4y 9y 6y Aggregate: 12y NPP 8y	Lengthy – includes driving through red light – breached bail for serious offence – misconduct in custody	Male driving stolen 4WD and under influence of ice and heroin drove through red light and collided with car – driver injured and passenger killed – period of dangerous driving leading up to collision – no lights – did not slow down – left scene of accident – unlicenced – driving in 'highly dangerous and reckless fashion' – driving causing death at upper end of seriousness – other offences slightly above and below mid-range Child of drug addicts with difficult childhood On appeal: sentence manifestly excessive in view of youth and background
5.	**Lawson** (20) [2018] NSWCCA 215	s.52AB(2) s.52A(4)	PG (25%)	Indicative 18m 3y 6m Aggregate 4y NPP 2y 6m	AD	AOABH, driving offences	Excessive speeding in breakdown lane on highway – overtaking vehicles on inside – crossed over to Lane 2 causing collision with victim's vehicle – victim suffered severe catastrophic ongoing injuries – attempted to leave scene of collision on skateboard but apprehended by motorist and restrained until police arrived Mental health issues - paranoid schizophrenia - driving to some degree caused by offender's delusional state – smoking cannabis On appeal: sentence appropriately reflected reduction in moral culpability for mental illness

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6.	**Pullen** (23) [2018] NSWCCA 264	s.52AB(2) s.52A(3)	PG (25%)	Indicative 3m 13m Aggregate 15m ICO	Crown AA Indicative 1y 6m 2y 3m Aggregate 3y ICO (includes 650h CSO)	limited	Under influence of cannabis and alcohol drove friend short distance to get wallet – asked by friend to slow down - lost control during road works section and collided with parked truck – friend jumped to driver's side but leg trapped and injured – risk to road workers – speeding – P-plate driver – tried to run off twice but restrained by roadworkers and police Genuine remorse – difficult childhood turning to drugs and alcohol after death of father – excellent prospects of rehabilitation – already completed 50h community service On appeal: at [45]-[52] error in finding seriousness of fail to stop offence well below mid-range – discussion of purposes of offence and factors influencing objective seriousness
7.	**Hoskins** (21) [2020] NSWCCA 18	s.52AB(1) s.166 Certificate Proceed through red traffic light Drive with licence susp	PG (25%)	3y NPP 18m s.10A s.10A	AA 2y 3m NPP 1y 3m	Multiple driving offences – other juvenile offences	Struck women crossing street and sped off, driving through red traffic light – surrendered to police next day – aware victim had died but concerned driving while licence suspended – prosecutor conceded no fault in impact Genuine remorse – history of physical and psychological trauma – good prospects of rehabilitation On appeal: failure to consider mitigating factors including remorse and *Bugmy* factors – erred in failing to consider influence of traumatic background on decision not to stop Per Basten JA at [15] - in determining an appropriate sentence for offence of failing to stop, care must be taken to ensure that sentence not of the same order as sentence which would have been imposed for causing the death, despite the identical maximum penalties
8.	**Wraydeh** (38) [2020] NSWCCA 309	s.52AB(1) s.52A(1)	PG (25%)	FT 2y 5y 3m Total: 7y NPP 5y 3m	AD	Dangerous driving, driving recklessly during police pursuit, robbery in company - on parole	Killed partner travelling in passenger seat - failed to negotiate right bend, crossed double lines onto wrong side of road and collided with oncoming vehicle - gross failure to responsibly manage vehicle - used clothing to wipe down driver's side door to remove fingerprints and looked for wallet before fleeing scene – callous disregard for welfare of victim – must have known victim gravely injured – towards middle of range Poor subjective features - poor intellectual functioning - long-term drug abuse On appeal: offence committed in context of wilful refusal to obey road rules over many years – importance of reflecting moral culpability for both offences

	CASE (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
9.	**Geagea** (51) [2020] NSWCCA 350	s.52AB(1) s.52A(1)	PG (25%) PG (10%)	Indicative: 4y 1m 4y 2m Aggregate: 6y 6m NPP 4y 2m	AA Indicative: 2y 3y 4m Aggregate: 3y 10m NPP 2y 6m	Dishonesty offences – no driving offences	Driving down suburban street in afternoon struck and killed male standing at open door of parked ute – visibility clear and no other traffic – driving slightly above speed limit – no intoxication or prior erratic driving – failure to steer clear – high degree of negligence – failed to stop – became aware of accident and attempted to dispose of vehicle – initially told police vehicle had been stolen Favourable prospects of rehabilitation – likelihood of re-offending low – strong family and community ties – lost most of livelihood due to offence On appeal: erred in taking into account attempt to dispose of vehicle when considering s.52AB offence – discussion as to scope and purpose of offence, relevance of maximum penalty and relationship to dangerous driving offence
10.	**Weldon** (29) [2025] NSWCCA 21	s.52A(3)(c) s.52AB(2) - Fail stop after impact cause GBH	PG (25%)	Indicative 2y 9m Aggregate ICO 2y 4m	Crown AD	Nil	Intoxicated – drinking with victim and second passenger – drove at high speed, lost control, car airborne, landed upside down – fled scene believing victim may have been killed, but did not leave until aware emergency services arriving and other uninjured passenger was remaining at scene - victim paraplegic, catastrophic injuries. Mental health - deprived childhood, major depression, alcohol dependence - sustained commitment to rehabilitation – remorse. CCA: Sentence manifestly inadequate – exercise of residual discretion not to intervene.

Last Updated: Mar 2025