



## NSW Legislative Council Hansard (Proof)

### Crimes Amendment (Road Accidents) (Brendan's Law) Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 18 October 2005 (Proof).

#### Second Reading

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [3.30 p.m.]: I move:

That this bill be now read a second time.

As the remarks have been delivered in the other place, I seek leave to incorporate them in *Hansard*.

#### Leave granted.

Recent tragic cases in NSW and other states have highlighted the difficulties and consequences which may follow when drivers leave the scene of a collision and do not stop and render assistance to victims.

In particular the case of Brendan Saul, a 9 year old boy who died after being struck by a car at Dubbo in January last year.

Under this bill, a new offence of failing to stop with much heavier penalties is introduced into the Crimes Act in recognition of society's abhorrence of those who injure their fellow citizens and then abandon them to die.

When a driver leaves the scene of an accident, leaving in his or her wake a dead or badly injured person, without attempting to render assistance, the fundamental code of civilised society is breached.

Every driver on our roads needs to be aware that with the privilege of driving on our roads comes a fundamental responsibility to our fellow drivers.

The bill creates section 52AB of the Crimes Act containing new indictable offences. The new section makes it an offence for the driver of a vehicle that is involved in a collision causing death or grievous bodily harm to fail to stop and give assistance in circumstances in which he or she knows, or ought reasonably to know, that the vehicle has been involved in such a collision.

Where the collision causes death, the maximum penalty for failure to stop is imprisonment for 10 years. Where the collision causes grievous bodily harm, the maximum penalty for failure to stop is imprisonment for 7 years.

The maximum penalties applying in these cases are severe. The maximum penalties are equivalent to those for offences of dangerous driving occasioning death and dangerous driving occasioning grievous bodily harm in section 52A of the Crimes Act.

As a result there will be no incidental advantage accruing to a driver who flees and knows or ought reasonably have known that death or grievous bodily harm was occasioned by the impact.

The extension of the mental element to incorporate an objective element of "ought reasonably have known" is warranted in the special circumstances of this offence. There should be no arguments about actual knowledge where objectively a person ought reasonable have known that death or grievous bodily harm would result from a collision.

The offences will apply to cases involving impacts occasioning death or grievous bodily harm. The definition of impact will be that used in section 52A of the Crimes Act. That definition is broad, extending to situations where vehicles run off the road or people are thrown from vehicles.

It will apply to any person who gets behind the wheel of a car—irrespective of age or whether they are licensed or unlicensed.

The focus of the new offences is to ensure assistance for victims of serious vehicle impacts. Assistance may save a life, minimise injury, improve the prospect of recovery, alleviate suffering and preserve the dignity of the injured or deceased. Failure to stop and assist in serious accidents should invite significant punishment.

The requirement is to stop and give any assistance necessary and that is in the driver's power to give. That is not to say that people must stop and perform first aid when they are not qualified to do so, or rescue someone

from a burning car in dangerous circumstances. Obviously common sense judgement will be required.

What is required is for the person to stop and take steps to assist directly or obtain expert help by contacting police or emergency services to ensure professional expert assistance is obtained at the earliest opportunity.

The actions of these drivers in fleeing may thwart police in their ability to identify the drivers and collect necessary evidence. The presence of drivers at the scene ensures that the investigation is at no disadvantage.

The creation of indictable offences of failing to stop and assist will also enliven a broader range of powers available to help police in investigation. For example, the power to demand the name and address of a person where a police officer believes on reasonable grounds that the person may be able to assist in the investigation of an alleged indictable offence.

A person convicted of these offences will be liable to mandatory driver's licence disqualification. The offences will be relevant offences for the purpose of habitual traffic offender declarations and disqualification periods.

There is provision to deal the proposed section 52AB indictable offences summarily or on indictment in the District Court at the election of the prosecution.

The bill also amends section 70 of the Road Transport (Safety and Traffic Management) Act.

Section 70 will be similar to section 52AB in that it will also incorporate the objective test where the driver knew or ought reasonably have known the result of the accident.

The offence will however apply to drivers of vehicles involved in collisions causing any physical injury.

The definition of impact will also be that used in section 52AB. Section 70 will continue to carry mandatory licence disqualification and be a relevant offence for habitual traffic offender purposes.

An education campaign aimed at informing drivers of their responsibilities will be developed prior to commencement of the legislation.

With these new sanctions motorists who flee the scene of an accident will face tougher penalties and a greater chance of being caught. The new offence strips away any incentive that may exist in the current penalty structure to flee or evade police.

Eighteen months ago a small boy died on a sunny afternoon in a terrible collision. Thanks to the long campaign of his father, this bill is a stepping stone of legal reform recognising that sad death. In a very real sense, this is Brendan's law.

I commend the bill to the House.