



**DATE OF SENTENCING:** 30 December 2025

**APPEARANCE:**

**PROSECUTION:** M Suifa'asia

**DEFENDANTS:** R Tagivakatini

## **SENTENCE**

### **INTRODUCTION**

1. Nikalus Garoa pleaded guilty to one count for driving whilst being under the influence of liquor contrary to section 69(1) and 79(1)(a) of the *Naoero Roads Act 2017*. I am to sentence him for it.
2. The facts surrounding the offending and the personal circumstances of the 1<sup>st</sup> defendant is undisputed, and there are no disputes about the issues I am to determine under section 279 of the *Crimes Act 2016*. Furthermore, there is no dispute about the sentencing principles to be applied. Therefore, the issues before me for determination are:
  - i. Should the 1<sup>st</sup> defendant be convicted as charged?
  - ii. What is the objective seriousness of the offending?
  - iii. What is the sentencing range?
  - iv. Whether a custodial sentence is appropriate in the circumstances?
  - v. Whether a record of conviction is to be entered against the 1<sup>st</sup> defendant?
  - vi. What is the appropriate sentence to be handed down to the 1<sup>st</sup> defendant?
3. The following are my reasons for the sentence.

### **FACTS SURROUNDING THE CIRCUMSTANCES OF THE OFFENCE**

4. The 1<sup>st</sup> defendant gave evidence during his trial that the night before 3 May 2025, he was drinking alcohol with Job Namaduk until 12.49 am. He then dropped Job at his home and picked up the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants and drank alcohol until 4 am on 3 May 2025. They were riding a vehicle around the island while drinking alcohol. At 4 am, the 1<sup>st</sup> defendant was dropped off at his home. At around 10 am on the same day, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants picked the 1<sup>st</sup> defendant from his house to drive them to get food because they were intoxicated and couldn't drive.
5. The 1<sup>st</sup> defendant drove to Meneng District and bought food. He was stopped by police officers in Yaren District and then taken to the police station with the other defendants.

## **PERSONAL CIRCUMSTANCES OF THE DEFENDANT**

6. The 1<sup>st</sup> defendant's personal circumstances are:

- i. He is 22 years old and is single.
- ii. He lives with his family in Buada District.

## **AGGRAVATING FACTORS**

7. I find that the only aggravating factor that applies to the 1<sup>st</sup> defendant is that he was driving underage youths who were also consuming liquor in contravention of section 39 of the *Liquor Control Act 2017*.

## **MITIGATING FACTORS**

8. I find that the following mitigating factors apply to the 1<sup>st</sup> defendant:

- i. There is a high chance that the 1<sup>st</sup> defendant will rehabilitate.
- ii. He is remorseful.
- iii. He is a young offender.
- iv. He is a first-time offender.
- v. He pleaded guilty at the earliest possible time available to him.

## **SHOULD THE 1<sup>ST</sup> DEFENDANT BE CONVICTED AS CHARGED?**

9. Section 190(4) of the Criminal Procedure Act 1972 provides as follows:

*Where the Court has recorded a finding under this Section that an accused is guilty of the offence charged, it shall, after hearing him or her, or his or her legal practitioner if any, as to any mitigating circumstances and any evidence thereof which may be advanced, either convict him or her and pass sentence on, or make an order against, him or her in accordance with the law or, if authorised by any written law to do so, discharge him or her without proceeding to conviction.*

10. I am not satisfied that there is any material before me that would justify a finding that the 1<sup>st</sup> defendant should not be convicted as charged. Therefore, I convict him as charged.

## **WHAT IS THE OBJECTIVE SERIOUSNESS OF THE OFFENDING?**

11. The 1<sup>st</sup> defendant is a young offender. I find that his moral culpability is low. In light of his personal circumstances, aggravating and mitigating circumstances, and his

moral culpability, I find that the objective seriousness of the current offending is at the lower to mid-range of the level of seriousness.

### WHAT IS THE SENTENCING RANGE?

12. The maximum penalty for the offence of driving under the influence of liquor under section 69 of the *Naeoro Roads Act 2017* for a first offence is as follows:

- (1) *Any person who is convicted of an offence under Section 69(2) is liable to:*
- (a) *for a first offence:*
    - (i) *mandatory suspension of his or her driver's licence for 6 months; and*
    - (ii) *a maximum fine of \$1,000; or*
    - (iii) *imprisonment for 6 months.*

### SENTENCING APPROACH AND PRINCIPLES

13. Section 278 of the *Crimes Act 2016* provides the following purposes for sentencing an offender:

#### ***278 Purposes of sentencing***

*The purposes for which a court may impose a sentence on an offender are as follows:*

- (a) *to ensure that the offender is adequately punished for the offence;*
  - (b) *to prevent crime by deterring the offender and other people from committing similar offences;*
  - (c) *to protect the community from the offender;*
  - (d) *to promote the rehabilitation of the offender;*
  - (e) *to make the offender accountable for the offender's actions;*
  - (f) *to denounce the conduct of the offender; and*
  - (g) *to recognise the harm done to the victim and the community.*
14. Section 279 of the *Crimes Act 2016* outlines the considerations that the court must consider when sentencing a person found guilty of an offence. The considerations under this section stems from Section 278 of the *Crimes Act 2016*.
15. Section 280 of the *Crimes Act 2016* provides the sentencing considerations that must be considered when deciding whether a term of imprisonment is appropriate.
16. Section 281 of the *Crimes Act 2016* provides the considerations that the court must consider as far as possible when deciding to impose a fine on a person found guilty of an offence.
17. Hunt CJ at CL in the Court of Criminal Appeal of NSW in *R v MacDonell*<sup>1</sup> stated that:

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<sup>1</sup> (unrep, 8/12/95, NSWCCA) at [1]

*The sentencing procedures in the criminal justice system depend upon sentencers making findings as to what the relevant facts are, accepting the principles of law laid down by the Legislature and by the courts, and exercising a discretion as to what sentence should be imposed by applying those principles to the facts found.*

18. Section 278 of the **Crimes Act 2016** adopts the common law principles of sentencing as was found in *Veen v The Queen (No 2)*<sup>2</sup> with reference to a similar sentencing provision in Australia. In that case Mason CJ, Brennan, Dawson and Toohey JJ in their judgment in the High Court of Australia made useful observations with regard to the interaction between the different sentencing purposes:

*... sentencing is not a purely logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment. The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions.*<sup>3</sup>

19. Further, the High Court of Australia in *Muldrock v The Queen*<sup>4</sup> reconfirmed the common law heritage of the relevant provision:

*The purposes there stated [in s 3A] are the familiar, overlapping and, at times, conflicting, purposes of criminal punishment under the common law [Veen v The Queen (No 2) at 476–477]. There is no attempt to rank them in order of priority and nothing in the Sentencing Act to indicate that the court is to depart from the principles explained in Veen v The Queen (No 2) [at 476] in applying them. [Relevant footnote references included in square brackets.]*

20. Having referred to the cases above on the application of the purposes for sentencing, I now emphasize on how the principle of proportionality as a fundamental sentencing principle guides and binds the balancing exercise of a sentencer with regard to the various purposes of sentencing referred to in Section 278(b)(c)(d)(e)(f) & (g) of the **Crimes Act 2016**. In this regard, Howie J, with whom Grove and Barr JJ agreed, made the following observations in the Court of Criminal Appeal of NSW in *R v Scott*<sup>5</sup>:

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<sup>2</sup> (1988) 164 CLR 465

<sup>3</sup> *Veen v The Queen (No 2)* (1988) 164 CLR 465

<sup>4</sup> (2011) 244 CLR 120 at [20]

<sup>5</sup> [2005] NSWCCA 152 at [15]

*There is a fundamental and immutable principle of sentencing that the sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed and the circumstances of the crime committed. This principle arose under the common law: R v Geddes (1936) SR (NSW) 554 and R v Dodd (1991) 57 A Crim R 349. It now finds statutory expression in the acknowledgment in s 3A of the Crimes (Sentencing Procedure) Act that one of the purposes of punishment is “to ensure that an offender is adequately punished”. The section also recognises that a further purpose of punishment is “to denounce the conduct of the offender”.*

21. An example of how the principle of proportionality operates is also found in *Veen v The Queen (No 2)*, *supra* where the High Court of Australia held that a sentence should not be increased merely to protect the community from further offending by the offender if the result of which would be a disproportionate sentence. In that case, Mason CJ, Brennan, Dawson and Toohey JJ made the following useful observations at [473]:

*It is one thing to say that the principle of proportionality precludes the imposition of a sentence extended beyond what is appropriate to the crime merely to protect society; it is another thing to say that the protection of society is not a material factor in fixing an appropriate sentence. The distinction in principle is clear between an extension merely by way of preventive detention, which is impermissible, and an exercise of the sentencing discretion having regard to the protection of society among other factors, which is permissible.*

22. Lamer CJ in the Canadian Supreme Court in *The Queen v CAM*<sup>6</sup> found that retribution in sentencing represents:

*...an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender’s conduct.*

23. Howie J in the Court of Criminal Appeal of NSW in *R v Zamagias*<sup>7</sup> made the following useful observations on the interaction of the various sentencing purposes and how the advancement of one purpose may achieve the goal of another:

*It is perhaps trite to observe that, although the purpose of punishment is the protection of the community, that purpose can be achieved in an appropriate case by a sentence designed to assist in the rehabilitation of the offender at the*

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<sup>6</sup> [1996] 1 SCR 500 at [80]

<sup>7</sup>[2002] NSWCCA 17 at [32]

*expense of deterrence, retribution and denunciation...*

24. In light of the above, I find that all of the purposes of sentencing would need to be considered and balanced against each other to reach a sentence which conforms with the fundamental sentencing principle of proportionality. No one purpose has priority over the other. The weight to be given to each purpose would depend on the circumstances of the offending, mitigating, and aggravating factors, and the offender's personal circumstances.

**WHETHER A RECORD OF CONVICTION IS TO BE ENTERED AGAINST THE 1<sup>ST</sup> DEFENDANT?**

25. I have considered Sections 277 (a) and (b) of the *Crimes Act 2016*. The 1<sup>st</sup> defendant is a first-time young offender. A record of conviction may affect his future endeavours, and given the objective seriousness of his offending, it would not be appropriate to record a conviction against him. Therefore, a conviction would not be recorded against the 1<sup>st</sup> defendant accordingly.

**IS A CUSTODIAL SENTENCE APPROPRIATE?**

26. I have considered section 280 of the *Crimes Act 2016*. I have also considered the circumstances of the current offending, and the fact that the defendant has spent approximately 7 months in remand custody; therefore, I find that a term of imprisonment is not an appropriate sentence for the 1<sup>st</sup> defendant.

**WHAT IS THE APPROPRIATE SENTENCE TO BE HANDED DOWN TO THE 1<sup>ST</sup> DEFENDANT?**

27. I have considered the various sentencing principles, applicable factors and circumstances of this case, including Section 279 of the *Crimes Act 2016*.
28. The 1<sup>st</sup> defendant does not have any prior criminal record. Furthermore, he pleaded guilty at the earliest opportunity.
29. I have considered the financial circumstances of the 1<sup>st</sup> defendant. Despite the 1<sup>st</sup> defendant being unemployed, a fine under the act is mandatory if a term of imprisonment is not applicable.
30. Section 79(1)(a) of the *Motor Traffic Act 2014* is very clear. For a first-time offence for driving under the influence of liquor where a term of imprisonment is not applicable, then the sentence must be a mandatory suspension of his or her driver's licence for 6 months, and a maximum fine of \$1,000.
31. In current circumstances, the maximum fine of \$1000 is appropriate because the 1<sup>st</sup> defendant was driving under the influence of liquor for a long duration of time, that is, he was driving while drinking liquor around the island, and not only that, he was driving underage youths who were consuming liquor with him in contravention of section 39

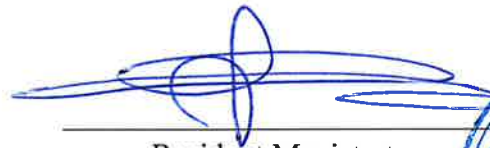
of the *Liquor Control Act 2017*.


## ORDERS

32. I make the following orders:

1. That a conviction is not recorded against Nikalus Garoa.
2. That Nikalus Garoa's driver's licence is suspended for a duration of 6 months. The registry is to inform the relevant authorities of the suspension of Niklaus's driver's licence.
3. That Nikalus Garoa is to pay a fine of \$1000 within 28 days from the date of this order.
4. That the parties are at liberty to appeal this sentence within 21 days.

Dated this 30<sup>th</sup> day of December 2025.

  
Resident Magistrate  
Vinay Sharma



The seal of the District Court of Mauru is circular, featuring a central emblem with a scale of justice and a book. The text "DISTRICT COURT OF MAURU" is inscribed around the perimeter of the seal.