**GUIDELINES FOR PREPARING CASE NOTES FOR THE PACIFIC CONSTITUTIONAL LAW DIGEST**

**ABOUT**

There is a lack of commentary on constitutional developments in the Pacific region. The Pacific Constitutions Research Network (PCN) aims to fill this gap by developing a database of short case summaries. It is intended that these summaries will be published as a database on PacLII and will be linked to the cases via the LawCite function on PacLII.

We are seeking volunteers to become part of this community. Depending on the number of people who volunteer, we may assign individual cases or groups of to you. We will also need people to review case notes.

Please email Anita Jowitt [Jowitt\_a@vanuatu.usp.ac.fj](mailto:Jowitt_a@vanuatu.usp.ac.fj) by 31 May 2017 if you would like to find out more, or be part of this community.

**CONTENT**

Name of case and PacLII citation

Judge

Counsel

**Keywords:** LIST TO EVOLVE: PARTICIPANTS TO SUGGEST KEY WORDS FOR CASE, AND WE WILL EDIT AND KEEP DEVELOPING LIST

Initial list:

criminal law;

sentencing;

retrospective application of law

motion of no confidence

human rights

parliamentary powers

executive powers

constitutionality of legislation

Cases referred to:

Summary:

Should cover facts, main authorities used (using PacLII citation), any ratio decidendi or obiter dicta, outcome of the case

Author (date)

**STYLE**

Simple formatting should be used. Names of cases and legislation should be in italics. PacLII citations should be used. In text referencing to paragraph numbers, where relevant, should used, instead of footnotes.

**EXAMPLE**

*Public Prosecutor v Malau* [2017] VUSC 25

Judge: Chetwynd, J.

Counsel: Mr Massing for the Public Prosecutor; Mr Garae for the Defendant

**Keywords: criminal law; sentencing; retrospective application of law**

Cases referred to:

*Wenu  v Public Prosecutor*[2015] VUCA 51

*Public Prosecutor v Gideon*[2002] VUCA 7

Summary:

The case involved sentencing for a number of sexual offences that the defendant had pleaded guilty to. These included an offence of unlawful sexual intercourse contrary to section 97(1) of the *Penal Code* [Cap 135].The offences occurred on or before 15th September 2016. The defendant was charged on 10th March 2017.

In December 2016 the Vanuatu Parliament passed the *Penal Code (Amendment) Act 2016*. This Act was gazetted on the 24th February 2017. It increased the maximum sentence for a breach of section 97(1) of the *Penal Code* [Cap 135] from 14 years to life imprisonment.

The question was raised as to ‘whether the defendant should be sentenced under the old regime or the new one’ [1].

The Judge held that the maximum sentence that could be imposed was 14 years. This is because Article 5(2)(g) of the *Constitution* states that‘No person shall be punished with a greater penalty than that which exists at the time of the commission of the offence’.

The Judge also took into account the importance of sentencing guidelines, observing that ‘Unless the sentences legislated are mandatory sentences the maximum sentences decided on in Parliament do not dictate the length of sentences imposed by the courts. The length of sentences imposed is a matter for the courts and not Parliament’ [3]. The Judge relied on *Wenu  v Public Prosecutor*[2015] VUCA 51 in support of the principles that there needs to be consistency in sentencing, and that the Court of Appeal, rather than the Supreme Court, should develop new sentencing guidelines. The sentencing guidelines developed in *Public Prosecutor v Gideon*[2002] VUCA 7 were therefore applied.

Anita Jowitt (12 May 2017)