

Establishing a telephone-based process for temporary protection orders

An overview of six Pacific countries

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Background

Over the last 15 years, 13 Pacific countries have introduced family protection laws that provide for temporary and/or emergency protection orders to be issued by courts using flexible, accessible, ex-parte procedures.

Family protection legislation across the Pacific provides mechanisms to ensure the protection of all family members at risk of violence: women, men, girls and boys. Women form the majority of applicants for these types of orders across the Pacific.

In December 2021, a Symposium was convened on Family Protection Orders Across the Pacific by the Australian National University and the Pacific Community (SPC). PJSP, and its predecessor programmes, had been working with Pacific courts on the timely publication of court data through Annual reports since 2011. While the number of Pacific courts publishing Annual Reports had significantly increased during this time, in 2020 only four Pacific courts had published data on protection order cases brought to the courts.

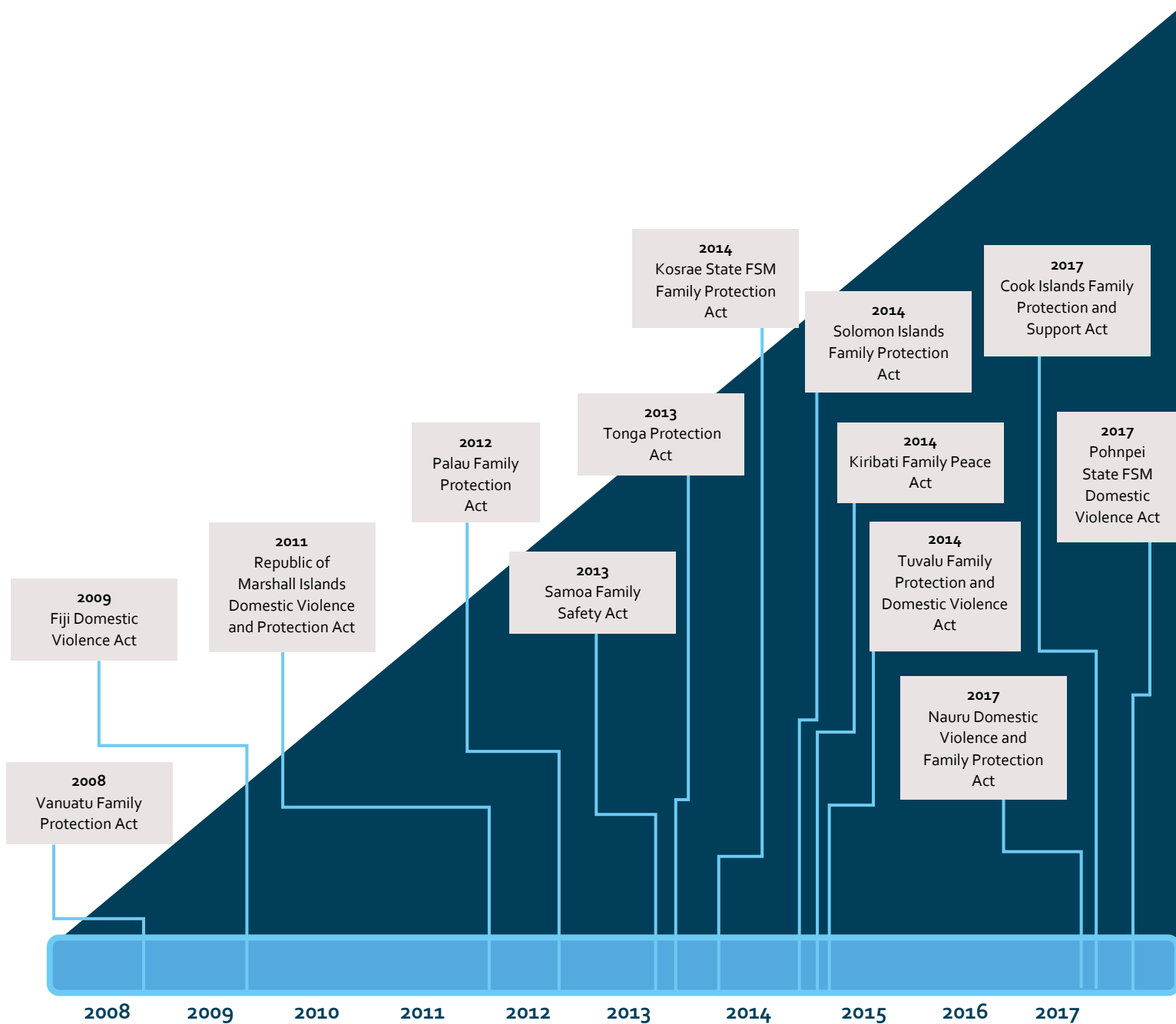
One court, Vanuatu, had published data on protection order cases since 2012. In 2020, more than a thousand protection order cases were brought to the court representing 40% of all cases in the Magistrates Court in Vanuatu. Yet the case data showed that only 4% of protection order cases were coming from outside the four locations where there are permanent registries despite 8 out of 10 people in Vanuatu living in rural areas.

In June 2022, PJSP published 10 years of Reporting on Family Protection Act cases across the Pacific 2011-2020. The data demonstrated that 14 years after the enactment of the first family protection law in the Pacific, the court's important role in hearing protection order cases and the outcomes for victim-survivors were largely invisible. Where data was available it showed that protection was more likely for those seeking it in urban areas where courts were located.

To address this access to protection issue, PJSP conducted a webinar with Pacific court partners in October 2022 to explore whether it was feasible for those at risk of family violence to obtain temporary protection orders through an end-to-end telephone-based procedure.

This publication provides an overview of whether end-to-end telephone-based proceedings for temporary protection orders are currently possible based on the existing legal frameworks in six Pacific jurisdictions. Some recommendations are also proposed to improve access to legal protection for people seeking protection when they and their children experience family violence.

Regional landscape on domestic violence legislation



Key Findings

<p>1</p>	<p>5 of the 6 countries' legal frameworks could support an end-to-end telephone-based procedure for temporary protection orders</p> <ul style="list-style-type: none"> • Five of the six legal frameworks reviewed could support end-to-end telephone-based procedures for granting and serving temporary protection orders, without requiring legislative amendment.
<p>2</p>	<p>Some courts have experience with end-to-end telephone procedures</p> <ul style="list-style-type: none"> • Of the six countries' family protection laws reviewed, it was found that some courts already have experience of using end-to-end telephone-based processes to deal with individual situations but are yet to formalise these approaches into procedures.
<p>3</p>	<p>COVID-19 protocols and practice directions may have broader application</p> <ul style="list-style-type: none"> • In some Pacific countries, protocols or practice directions for remote proceedings were issued as a response to COVID-19 and could be modified and reissued to have more general application to expand ongoing access to temporary protection orders covering a much larger proportion of the national population.
<p>4</p>	<p>Temporary protection orders granted by Authorised Persons / Justices not integrated with Court case management systems</p> <ul style="list-style-type: none"> • The family protection legislation in two Pacific countries provide for Authorised Persons/ Authorised Justices and contain provisions on how temporary protection orders issued by an Authorised Persons/ Authorised Justice may be referred to the courts to issue final protection orders. • However, in practice, the link between Authorised Persons and Courts is yet to be established: temporary protection orders granted by Authorised Persons/ Authorised Justices are absent from court case management systems and from court Annual Reports. • This creates risks for victim safety, because if a person were to seek a temporary protection order from an Authorised Person/ Authorised Justice and then later on from a Magistrate, there would be no record of the first temporary protection order or any breach of it for the Magistrate to consider when making their orders.

Recommendations and next steps

<p>1</p>	<p>Update practice directions</p> <ul style="list-style-type: none"> • PJSP recommends that courts consider updating practice directions, rules or protocols developed by many courts to enable continued court function while COVID-19 restrictions were in place. These can be further amended or elaborated to clarify the ongoing availability of telephone-based procedure for handling temporary protection order applications, grants and service.
<p>2</p>	<p>Undertake location-based assessments</p> <ul style="list-style-type: none"> • Operationalising a telephone-based procedure will require individual country and location-based assessment including: <ul style="list-style-type: none"> ➢ Technology requirements and ICT support: the court’s access to suitable telephones capable of video and call conferencing, connection to speakers; ICT support for troubleshooting and training court personnel in using telephones for applications and hearings. ➢ Developing effective processes for service of court protection orders. ➢ Capacity building requirements: for judicial officers, court staff in using the technology, following the procedure including in documenting the procedure on the case file. ➢ Court user resources: Telephone guides for court users; mapping of local places they can access a telephone; mass community awareness raising campaign focused on rural and remote locations and targeting village chiefs, women, people with disabilities and children as priority groups. ➢ Close cooperation with other key justice actors involved in the protection order process, including police and family violence services, especially those that have deep reach into remote and rural areas.
<p>3</p>	<p>Set up a toll-free help desk</p> <ul style="list-style-type: none"> • Ideally, courts can introduce toll-free helpdesk numbers so that those needing assistance with protection order applications can be swiftly and remotely assisted wherever they are located in the country.
<p>4</p>	<p>Implement broader measures</p> <ul style="list-style-type: none"> • Telephone-based proceedings should also be accompanied by other measures to increase access to protection orders including through: <ul style="list-style-type: none"> ➢ initiation of local courts’ jurisdiction to grant temporary protection orders ➢ court support for roll out of Authorised Person/ Justice pilots and integration of all temporary protection orders granted, whether by Authorised Persons or Courts, into court case management systems so that full case histories are visible to Magistrates considering final protection orders or related criminal or family law proceedings.

	<p>➤ Expanded telephone-based court services should also be accompanied by greater visible presence of local and magistrate courts through mobile courts in remote and rural each information, increasing community awareness of how courts operate and the remedies they can provide.</p>
<p>5</p>	<p>Expanded pathways to court</p> <ul style="list-style-type: none"> • In April 2022, the Palau Judiciary issued Guidelines Relating to Actions for Restraining and Protective Orders Subchapter II of the Family Protection Act (the Guidelines) clarifying that protection orders are given docket priority and are to be brought immediately to the court’s attention. The Guidelines also clarified that in addition to court staff, the Office of Victims of Crime Advocate can assist people who need assistance in completing the forms for filing protection order applications. Other Pacific family protection laws also contain provisions allowing third parties to apply on behalf of victims and could similarly strengthen these access pathways in practice.
<p>6</p>	<p>Continue to report on FPA data</p> <ul style="list-style-type: none"> • Timely FPA Data: Courts are one part of a national response to ending family and other violence especially against women and girls. They hold unique and crucial data that no other institutional actor can provide. Publishing key data on family protection cases coming to court is critical information to support Government stakeholders and Non-Government Organisations in their understanding of what is working well and what needs to be improved. • PJSP has worked with some courts on a one-page document summarising court data and responses to family protection cases that could be used by courts to inform regular national meetings on family violence with government and non-government stakeholders. (See Annex 2) • Only one court, the Republic of the Marshall Islands, published an Annual Report for 2022 that included the number of protection order cases filed in that country. Four other courts published data on protection order cases in their most recent Annual Report published in the last five years. (See Annex 1) • The many government and non-government agencies responsible for assisting women facing family violence rely on timely data from a range of agencies including courts to develop and implement effective family violence polices across the Pacific. • The significant efforts of courts across the Pacific to assist women and men and their children in family protection matters is invisible when court Annual Reports are silent on family protection law cases or are published many years after the reporting period.

Why telephone-based temporary protection order procedures are a potential 'game-changer'

The aim of telephone-based procedures for temporary protection orders is to vastly increase the accessibility of such orders, sought on an urgent basis directly from courts to those who live in remote locations or who otherwise find it difficult or expensive to physically access a court.

This applies to the majority of people living in Pacific countries. Notably, it applies especially to women, who are statistically most likely to need a protection order, but who also face the largest barriers to doing so, including lower levels of legal awareness, less access to funds for transportation, less mobility due to carer responsibilities, difficulty of travelling with children, gendered expectations that they remain at home and fear of the repercussions of seeking protection from the violence they are experiencing.

The aim of increasing the availability of temporary protection orders to all who need them, is fully aligned with the legislative intent of Pacific family protection laws. Most contain accessibility provisions such as: a lack of application fees; the ability to file applications by telephone or other means; and to receive the assistance of court staff to convert verbal applications to written formats. Courts being capacitated to provide, with accompanying safeguards, fully telephone-based temporary protection order processes, would remove the most common barrier faced by family violence victims, being lack of ability to physically access a court.

Why telephone-based proceedings?

Courts face tight resource constraints and are often unable to maintain a physical presence in rural and remote areas. Transportation in remote and rural areas is scant and very expensive, making it impossible for most people to physically attend a court even in emergencies. Inability to physically get to a court is the single biggest barrier to victims' access to family protection orders.

Telephone-based court procedures for temporary protection orders have the potential to be a 'game-changer' in expanding access to temporary protection orders in remote and rural communities.

A great and ever-increasing number of people living in remote Pacific locations, including women, can access telephones networks. While telephone network coverage across the Pacific is not universally available nor always reliable, there is enormous ongoing investment in expanding and improving telecommunications and internet access across the Pacific. This provides ever-increasing opportunities to reach more people and provide them with crucial services, like protection orders.

While not every person in the Pacific has access to, or knowledge of how to use a mobile phone, recent consultations with women villagers in rural locations across Kiribati and Vanuatu confirm that network coverage is available at least sometimes in most areas and that most women either own a phone or are able to access someone else's if they need to.

A common impediment to wider telephone use for seeking services, including protection orders, is a lack of phone credit. Toll-free help lines provided by courts would further increase the accessibility of temporary protection orders provided over the telephone. In the meanwhile, this risk of callers not having much phone credit can be partially mitigated by court staff being trained to immediately

secure the name and telephone number of the caller and then call them straight back at the court's expense.

Integrity and safety issues

Telephone-based temporary protection order proceedings must be safeguarded to ensure the identity of parties can be confirmed, as well as their immediate safety to participate in the telephone-based process. These safeguards can be more readily provided where applicants in remote locations are able to attend a local place, such as a health clinic, local government service, family violence service or other, where they can readily access the telephone to contact the court and be assured of their safety during the call. Courts can map local service networks in each location and publicise these telephone access points for each area.

It is also important that those obtaining protection orders by telephone do not face backlash in their own communities when police or others arrive to serve the temporary protection order on the respondent. To reduce this risk, it is especially important that village chiefs or equivalents be made aware of remote court protection order processes and of any protection orders granted to people in their village. This is because village chiefs are often the most important local actor for guaranteeing the security of the victim, especially where no police post is present. Their help may also be essential for guaranteeing the safety of those granting and serving temporary protection orders on respondents, including Authorised Persons and local court justices.

Need for multi-pronged approaches

Telephone-based temporary protection order proceedings could greatly increase the accessibility of legal protection against family violence in remote and rural areas. However, they are not a stand-alone 'silver bullet' and other complementary approaches to expand access to family protection orders are also necessary including:




- Vastly expanding in rural areas community legal awareness of family protection laws, procedures and where to get help, including from courts and specialised family violence services. Chiefs are also key actors to be included in legal awareness raising. They can either facilitate or block victims' access to help.
- Introducing mobile courts to travel to remote locations.
- Initiating existing but unused jurisdiction of local-level courts to grant temporary protection orders. Lay justices/magistrates are present at the village-level in rural and remote locations and therefore with proper training, support and oversight would be ideally positioned to provide in-person assistance to those in remote and rural areas in need of temporary protection orders.

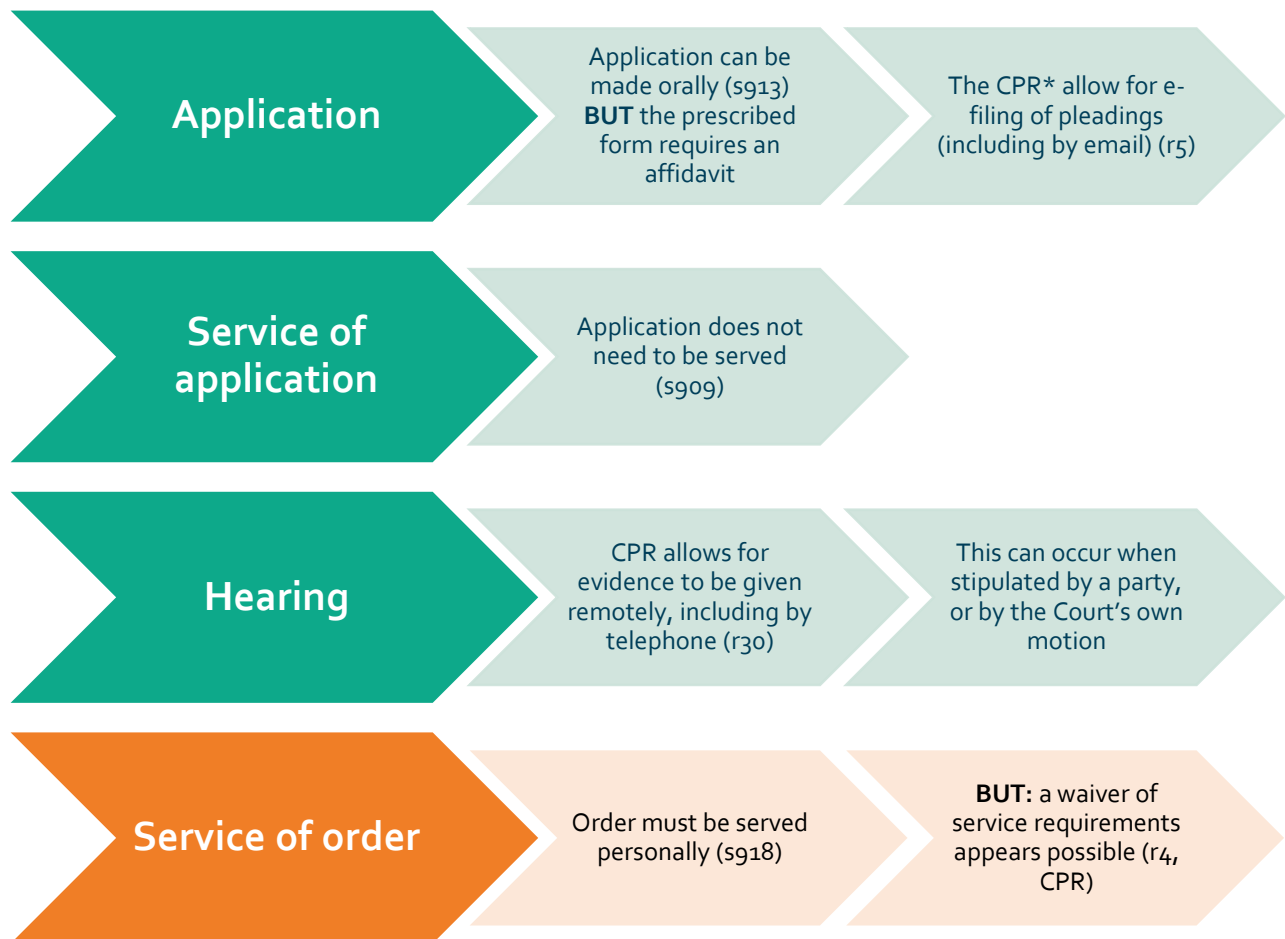
Detailed findings

Family protection legislation reviewed

1. Republic of the Marshall Islands (RMI)
2. Samoa
3. Solomon Islands
4. Tonga
5. Vanuatu
6. Palau

The following presents a summary overview of whether, under existing legal frameworks, a court:

-  can currently provide an end-to-end telephone process for interim and emergency protection orders, or
-  could do so using the court's own directives, rules or processes, or
-  whether legislative change is required.



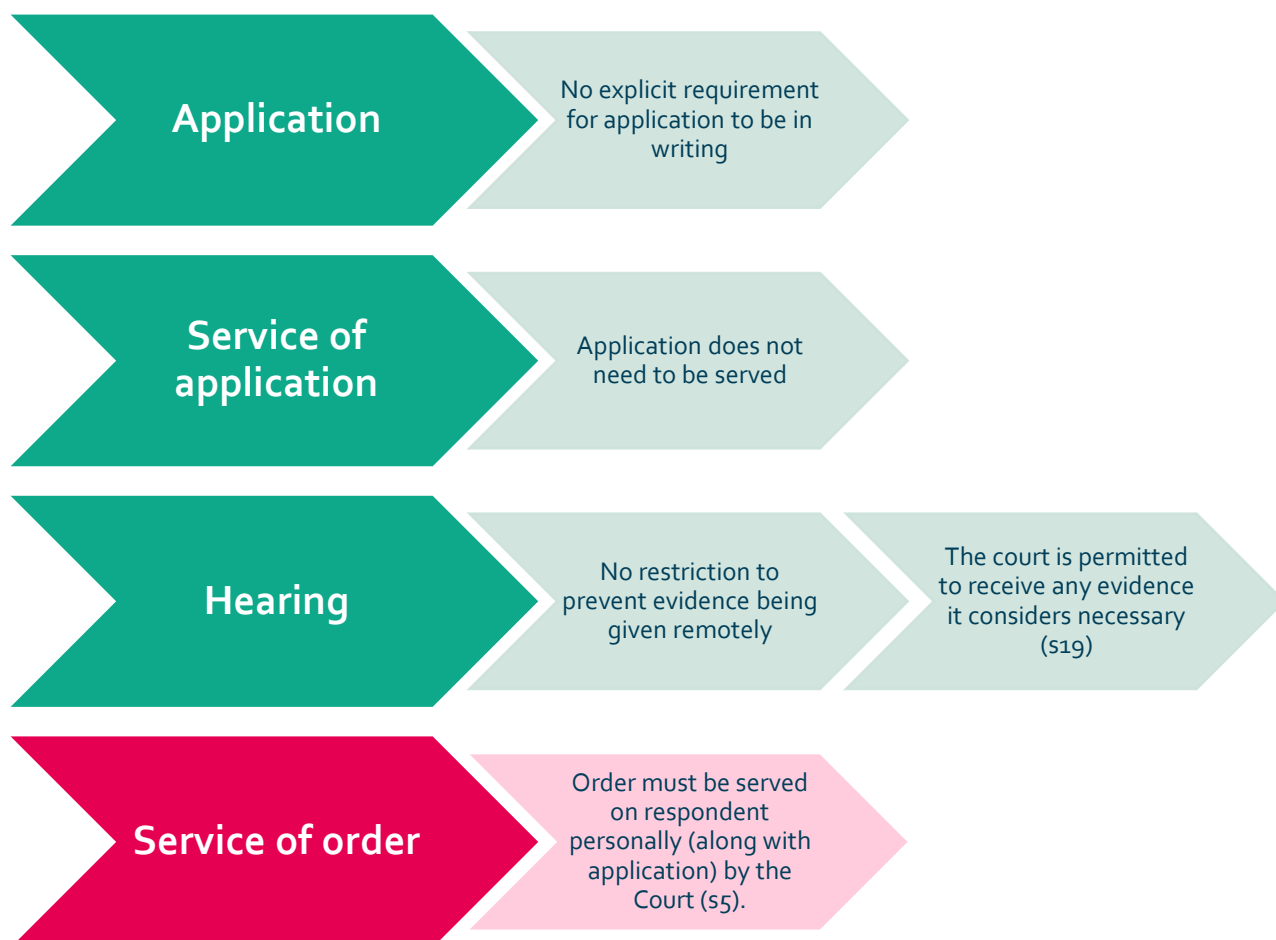
RMI's laws are broad enough to allow for an end-to-end telephone-based process

Recommendation

Court to make rules for protection order cases to:

- confirm an affidavit is not required for an application;
- provide authority to conduct application hearings remotely (by telephone or video conference);
- outline the process to apply for a waiver of service requirements, as well as the criteria for granting such a waiver.

* *Rules of Civil Procedure 2015*



Samoa's laws are broad enough to allow for an end-to-end telephone-based process

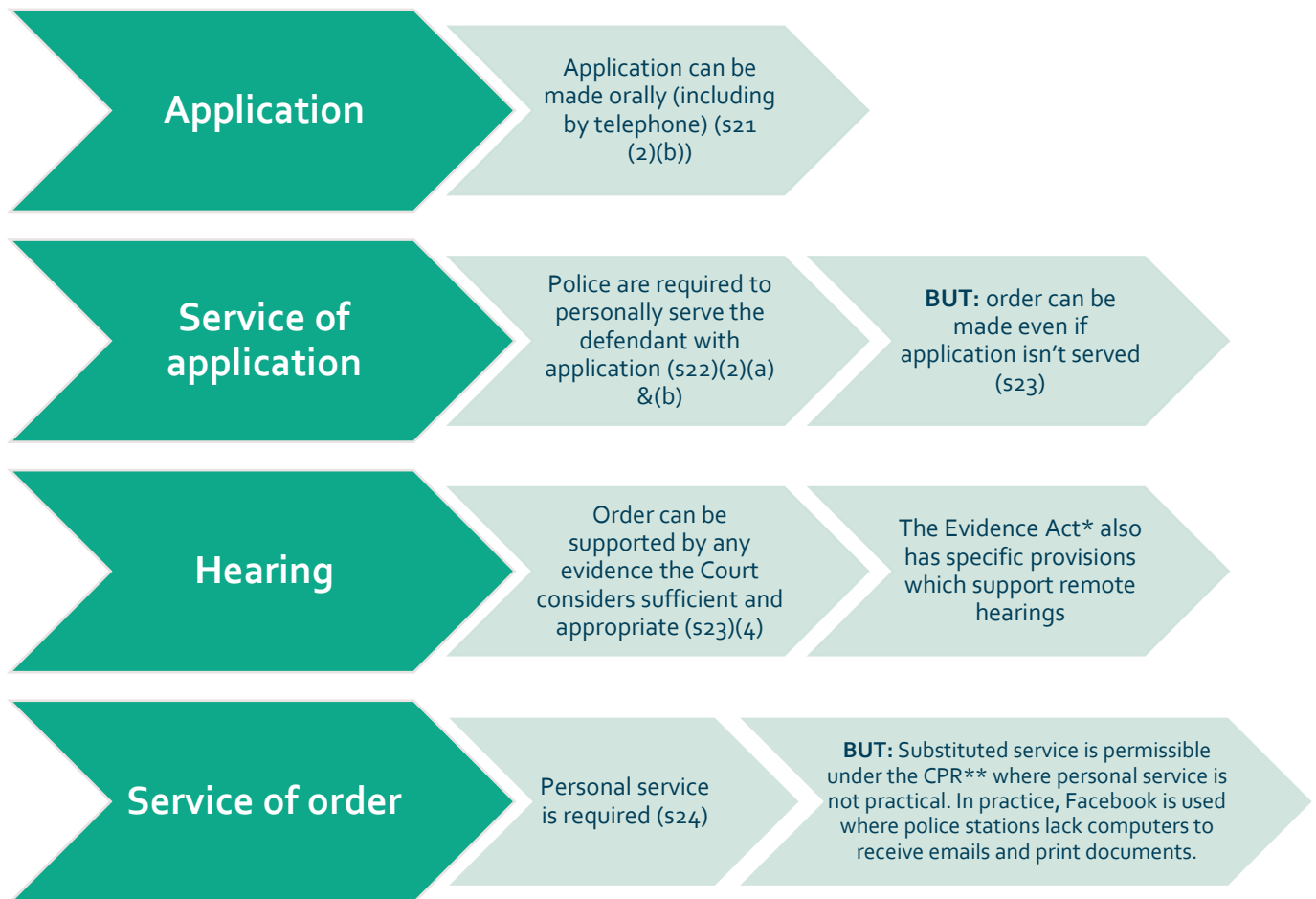
Recommendation

Order a new practice direction to confirm that:

- oral application for protection orders may be made, including via phone;
- evidence can be provided remotely; and
- service can be effected remotely, if convenient and practical.

*

**District Courts Act 2016*



The Solomon Islands' laws are broad enough to allow for an end-to-end telephone-based process

Recommendation

Order a new practice direction to confirm that:

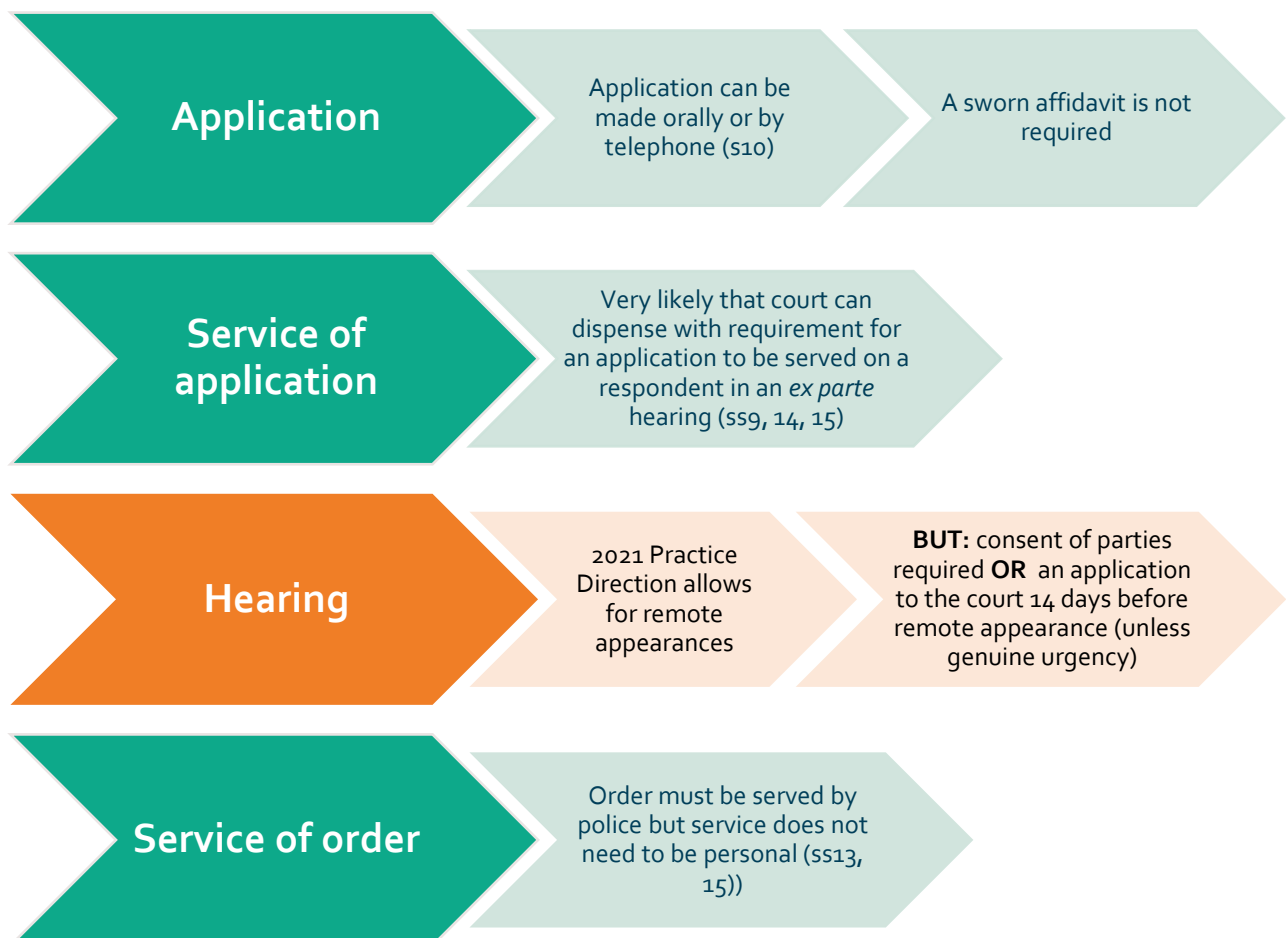
- Courts can rely on provisions in the Evidence Act to allow applicants to provide evidence remotely; and
- the substituted service options in the Civil Procedure Rules should be relied upon where personal service is not practical or where it would result in an unreasonable delay in the defendant being served (and therefore the interim order being given effect). Facebook can be used where police stations lack computers to receive emails and print documents and can be the basis of the police affidavit of service.

* Evidence Act 2009

** Rules of Civil Procedure 2007

Tonga

Family Protection Act 2013*



Tonga's laws are broad enough to allow for an end-to-end telephone-based process

Recommendation

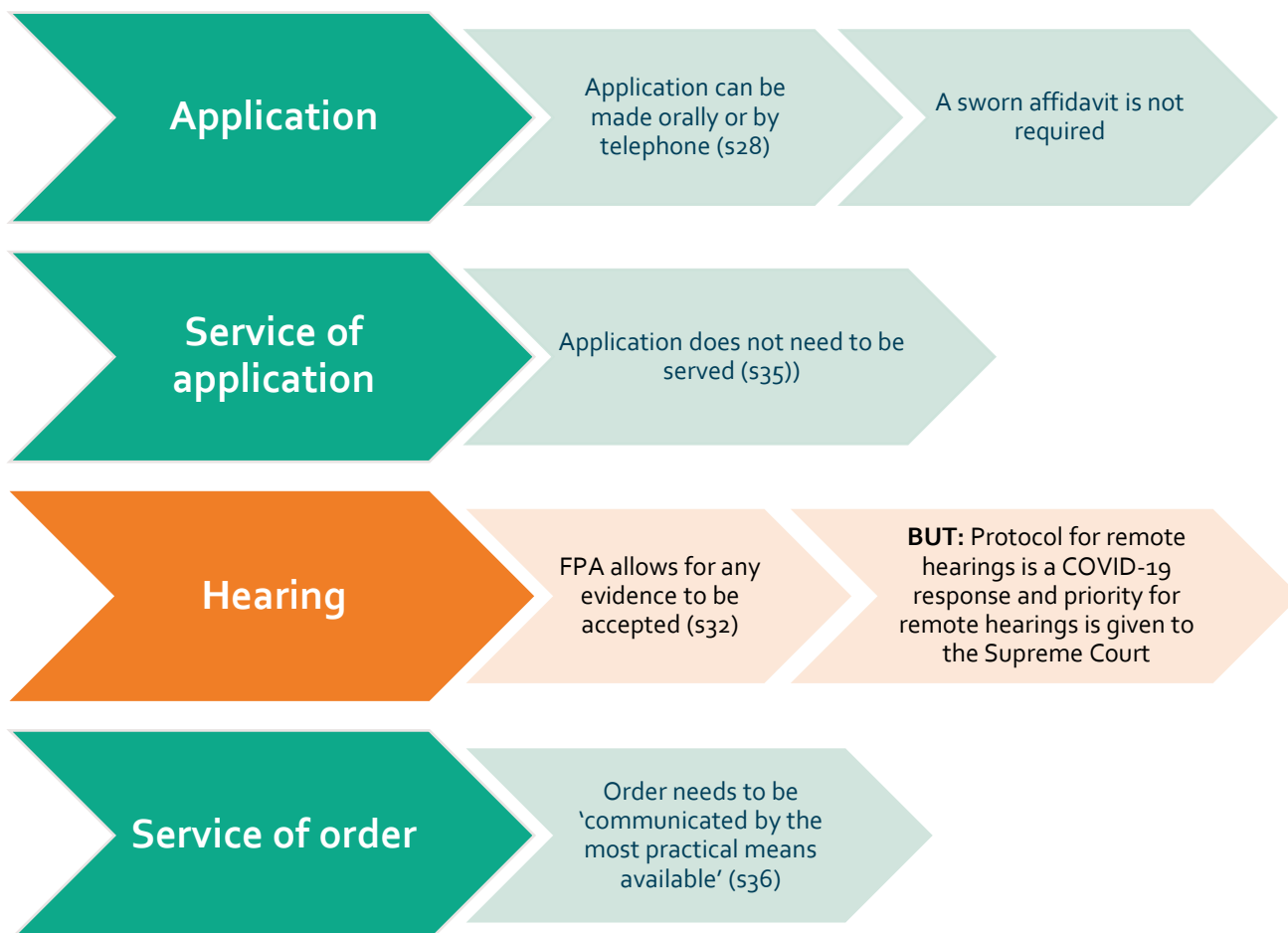
Order a new practice direction to confirm that:

- confirms that an application for an EPO or TPO does not need to be served;
- clarifies how a protection order applicant can apply to appear at a hearing remotely; and
- confirms that police can use remote means to serve an EPO or TPO (and that a court may order such means of service).

* FPA provides two types of interim protection orders: Emergency Protection Orders (max 28 days); and Temporary Protection Orders (max 60 days).

Vanuatu

Family Protection Act 2008



Vanuatu's laws are broad enough to allow for an end-to-end telephone-based process

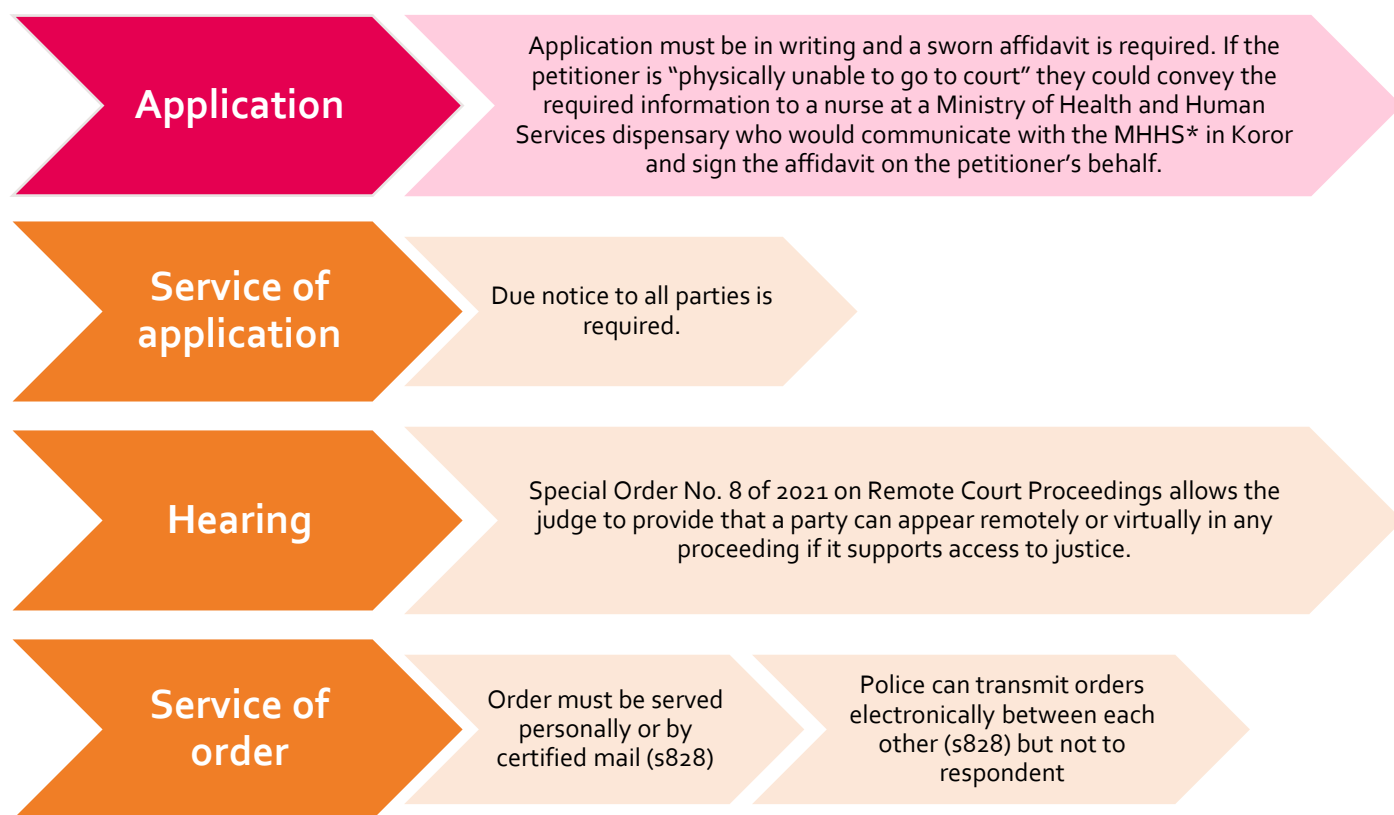
Recommendation

Order a new protocol for remote hearings that:

- applies irrespective of COVID-19;
- applies specifically to applications for protection orders in the Magistrates Court;
- allows for remote hearing by telephone.

Consider a Court Practice Direction or other format to ensure that

- protection orders cases granted by Authorised Persons are integrated in the court case management system to enable better tracking of case outcomes from temporary to final protection orders.



Palau’s laws are **not currently** broad enough to allow for an end-to-end telephone-based process

Recommendation

- **The Supreme Court is in the process of amending the Rules of Civil Procedure** and as part of this review is considering provisions to allow for electronic service. It is hoped that the proposed amendment will dispense with the requirement that parties must file a signed written statement and also permit the service of documents electronically including via email, SMS or WhatsApp, to allow for easier remote service.
- **Currently, there is a statutory requirement that the application be in writing and supported by a signed affidavit.** A legislative amendment is required to change s823(b) of the Family Protection Act to allow an agency of the Republic of Palau to assist a petitioner to lodge their application and sign an affidavit on their behalf in cases where the petitioner, due to trauma or other psychological condition, is unable to come to court themselves. At present an agency of the Republic of Palau can only provide this assistance where the petitioner is physically unable to come to court.

- Under existing law, the Court can designate a court employee or appropriate nonjudicial agency to assist a person to complete the petition requirements, (s823(d). The Court is part of a Memorandum of Understanding (updated in 2022), identifying the Victims of Crime Advocate as an agency able to assist with petition applications and current practice is the agency can sign the petition on behalf of the applicant, meaning that the applicant could still apply for the order by telephone.

** In April 2022, the Palau judiciary issued guidelines allowing the MHHS and Victims of Crime Advocate (VOCA) to assist petitioners with the claim forms.*

Annex 1 – 2022 Protection Order case data update

The many government and non-government agencies responsible for assisting women facing family violence rely on timely data from a range of agencies including courts to develop and implement effective family violence policies across the Pacific.

Only one court, the Republic of the Marshall Islands, published an Annual Report for 2022 that included the number of protection order cases filed in that country (a total of eight cases protection order cases filed on the islands of Majuro and Ebeye). Four other courts published data on protection order cases in their most recent Annual Report published in the last five years.

The significant efforts of courts across the Pacific to assist women and men and their children in family protection matters is invisible when court Annual Reports are silent on Family Protection Act cases or are published many years after the reporting period.

Country	Latest published annual report	Protection Order data in annual report	Requirement to report on family violence data
Cook Islands	2016	No	No
FSM Supreme Court	2021	No, as Protection Orders not heard in Supreme Court	TBC
Fiji	Not in last decade	No	No
Kiribati ✓	2018-2019	Yes	Yes, annual statistics must be compiled at least annually (s44)
Marshall Islands ✓	2022	Yes	Yes, data on family violence must be collected, maintained and reported on (S927)
Nauru	2009/2010	No	Yes, Family Protection Co-ordinating Committee must table annual report (s11)
Niue	2018-2019	No	N/A – no DV legislation
Palau	2022	No but the 2021 Annual Report does	No
PNG Magistrates Court	2012	No as Magistrates Court has not published an Annual Report since 2012	No
Samoa	2018-2019	No	No
Solomon Islands	2015-2019	No	Yes, Family Protection Advisory Council reports on any








Country	Latest published annual report	Protection Order data in annual report	Requirement to report on family violence data
			matters relating to domestic violence (ss49,53)
Tokelau	2016-2018	No	N/A – No DV legislation
Tonga ✓	2020-2021	Yes	Yes, Family Protection Advisory Council reports annually (s37)
Tuvalu	Not in last decade	No	Yes, CEDAW National Coordinating Committee reports annually (s58)
Vanuatu ✓	2020	Yes	Yes, FPA Act must be reviewed within 3 yrs (s52)

Annex 2–Family Protection Act case update summaries

2021 Palau Family Protection Act cases update

-  69 restraining order cases were filed in 2021, 71 cases finalized with a clearance rate of **103%**. The trend clearance rate for restraining order cases has not fallen below 94% in the last five years.
-  Restraining order cases made up 8% of total cases filed in the Court of Common Pleas. Note: citation cases that are paid at court and not heard by a judge are excluded from this calculation.
-  The average duration of a final restraining order case was **16 days**.
-  **77%** of applicants in restraining order cases were female, whilst 20% were male and 3% were filed jointly by male and female applicants. The proportion of female applicants is up from 2019 and 2020, where women made up 43% and 48% of applicants, respectively.
-  Only **1** restraining order case was reported to involve a person with disability. This is down from 4 cases in 2020, and 12 in 2019.
-  Majority of applicants and respondents were or had been in a dating relationship (36%) or were related (35%).
-  **84%** of applications for temporary restraining orders and **77%** of applications for final restraining orders were **granted**. This is down from previous years.
-  **53** criminal charges were filed under the Family Protection Act. Whilst this is lower than 2020 (where there 66 criminal charges filed), there is a general trend towards the number of charges increasing.

2020/2021 Tonga Family Protection Act cases update

-  **157** restraining order cases were filed between 1 July 2020 and 30 June 2021, with a clearance rate of **115%**. The trend clearance rate for restraining order cases has not fallen below 103% in the period since 2018. The majority of applications are heard at Ha'apai and Vava'u.
-  **77%** of applicants in protection order cases were female, whilst **19%** were male and **4%** were jointly filed by male and female applicants. This proportion of female applicants is similar to 2019-2020.
-  Protection order cases represented **1.24%** of the cases filed in the Magistrates Court. This is a slight decrease from recent years.
-  The average duration of a protection order case was **52 days**. The average varies between registries and ranges from 36 days (Ha'apai) to 83 days (Tongatapu). *Note: the data does not distinguish between protection order types.*
-  The majority of protection order applications were granted, irrespective of the type of order sought. The proportion of applications refused did not exceed **12%** for any protection order.
-  Almost half the applicants in protection order cases in the Nuku'alofa registry were not assisted with their registration cases. However, **49%** of applicants were assisted by the Tonga Family Protection Legal Aid Centre.
-  The most common relationship between the applicant and the respondent is parent of a child (**40%**). In another **25%** of applications, the applicant and respondent were married.

Family protection data: 10 indicators

- 1**  Cases filed, finalised and clearance rates including type of protection order (interim/ final) and location (by registry/ island)
- 2**  Sex/gender disaggregated data for the applicant and respondent in protection order cases
- 3**  Family Protection Act cases as a % of total cases filed in the Magistrates Court
- 4**  Average duration of a protection order case – interim/ final/ total cases and disaggregated by registry
- 5**  Outcomes in protection order cases:
 - Granted/ not granted/ withdrawn (for both final or interim protection orders)
 - conditions that were included in protection orders for contact, custody of children, maintenance, residence
- 6**  Number of cases in which any of the parties in a protection order case indicate they have a disability
- 7**  Number of cases where assistance provided to file protection order applications and who assisted: Women's Centre/ Police/ Authorised persons/ Public solicitor/ private lawyer
- 8**  Relationship between the parties: intimate partner, other family member
- 9**  Number of protection order cases filed and/ or heard remotely including type of protection order (interim/ final)
- 10**  Number of breaches of protection order; family violence offences; penal code offences involving a family member.