HopgoodGanim

LAWYERS

IAML Hague Symposium Singapore 2012

Overview of Mediation Dispute Resolution in Child Abduction Cases

Geoff Wilson, Partner
g.wilson@hopgoodganim.com.au

Overview of Mediation Dispute Resolution in Child Abduction Case

Geoff Wilson[1]

Introduction

Whilst the following passage compares the impact of enforcement of parenting orders with Contempt, I draw some useful analogies from the statement:

> *The dichotomy of enforcing orders on the one hand and punishing a person for contempt of court on the other shows up in sec 112AD and 112AP and is repeated in the rule-making power. This dichotomy is emphasised in Report No. 35 of the Australian Law Reform Commission on Contempt published in 1987. It was this Report that was the background of and catalyst for the 1989 amendments that put Pt XIIIA into the Act.*
>
> *Nowhere in our court system is the difference between enforcement of orders and contempt so important as in the family law area. The vast majority of applications in this field of family law is in relation to orders made regarding the welfare of children, e.g. access, custody, abduction matters. The applications are made by one parent against another. One parent wants an order enforced by coercion. The order is not a one off property or monetary order as are the orders in other jurisdictions. The parents will remain such and hence have an ongoing relationship with each other irrespective of the coercive order made in the enforcement proceedings. This is the reason for the passage of sec 112AD(5) (counselling) which in all other respects is a contempt type section providing for punishment for disobedience of an order except for sec 112AD(2)(g) referring to an award of compensatory access.* [2]

Such are laudable sentiments when the best interests of the child, the future parent to parent relationship and future parent to child relationship are at stake. Mediation is a valid option to litigation towards a more constructive outcome for families. As to mediations application to international parental child abduction cases, there is a groundswell of discussion and support and some early engagement in the process. The concept is in its infancy.

Mediation

The Mediator Standards Board describes mediation as:

> *'... a process in which the participants, with the support of the mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to support participants to reach their own decision. Approval Standards November 2008.* [3]

Professor Laurence Boulle[4] defines mediation as:

> *A decision-making process in which the parties are assisted by a third party, the mediator [who] attempts to improve the process of decision making and to assist the parties reach an outcome to which they can assent.*

The UK College of Family Mediators Directory and Handbook (1997/8) defines mediation as:

---

[1] BCom; LLB (hons) (UQ); Geoff Wilson is an Accredited Family Law Specialist and a partner of HopgoodGanim Lawyers in Brisbane. The contents of this paper are not legal advice and not to be used as such. Legal practitioners and parties to agreements should form their own views as to the matters contained in Part VII of the Family Law Act. I am indebted to the invaluable assistance Helen Tooth provided to me in the preparation of this paper.

[2] Jackson and Fordham (1995) FLC 92-561 at 81,593

[3] (http://www.msb.org.au/about-mediation/what-mediation)

[4] Mediation: Principles, process Practice (1996)

A process in which an impartial third person assists those involved in a family breakdown,...to communicate better with one another and to reach their own agreed and informed decisions about some or all f the issues relating to or arising from the separation, divorce, children, finance or property.

The Law Council of Australia, Ethical Guidelines for Mediators defines mediation as:

...a process in which an impartial person – a mediator – facilitates the resolution of a dispute by promoting uncoerced agreement by the parties to the dispute. A mediator facilitates communication, promotes understanding, assists the parties to identify their needs and interests, and uses creative problem solving techniques to enable the parties to reach their own agreement.

Article 3 (b) of *Mediation Directive*:

"a structured process...whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator"

Mediation comes in many forms and there are multiple definitions which of itself can be problematic in cross border disputes.

Hon Brian Jordan and Peter Sheehy summarise some of the available options as follows[5]

Within the mediation model, there are numerous styles and practices from the therapeutic, the facilitative and the evaluative to what is described by Professor John Wade of Bond University as the settlement model.

The classic approach to mediation is best illustrated in the facilitative model. This style of mediation has at its core the concept that the process should be one that enables and empowers parties, with the assistance of an objective third party, to identify their issues in the dispute and find their own solutions to those problems. The mediator's role is that of a facilitator. He/she need not have any expertise in the area of the dispute and should not suggest outcomes or offer opinions as to merits.

The evaluative model is one where the mediator retained does have some expertise in the field the subject of the substantive dispute. Whilst the mediator will necessarily continue to manage the process and facilitate discussion, he/she may be called upon to undertake some evaluation of the merits of the cases and either express some direct opinion as to the likely outcome of the litigation or express some view about the merits of competing claims or proposals.

Finally, the so-called settlement model has a much narrower focus. The process in such matters is likely to be largely conducted in the traditional way with negotiations primarily between legal practitioners on instructions from their respective clients. In turn, those instructions are likely to be heavily influenced by advice from the legal representatives. In many ways, the mediator could be viewed as by largely superfluous.

In Queensland, the bulk of the mediators and practitioners regularly participating in the mediation appear to favour an approach which embraces features of the three models described. Professor Wade would disagree with that proposition because it is unlikely that he would concede that there is any real evidence of features of the facilitative model in the Queensland practice. However, the most common approaches used locally seem to follow a pattern where the mediator at least commences the process by carefully ensuring all statements are entirely neutral and limits his/her role to one of management of the exercise. The bulk of mediations are conducted on a shuttle basis with the parties not being brought together. After dealing with the preliminaries and setting an agenda, the mediator will encourage the parties to embark upon a negotiation process which he/she will oversee. Most often the mediator will withhold any evaluative observations until he/she is called upon to provide them or until such time as he/she perceives it necessary or helpful to express opinions. Thereafter, the process usually narrows further to what are essentially settlement negotiations with the

[5] Hon. Brian Jordan and Peter Sheehy, "Mediation in Property Matters – Practice and Reform", TEN 4th Annual Family Law Conference Gold Coast Queensland July 2010

mediator intervening if the negotiations appear to be breaking down using a variety of techniques designed to re-manoeuvre the discussions.

Why Mediate?

I highlight the following statement[6] as a useful reminder of the risks and limitations of our court systems and the benefits of the parties reaching their own solution to their problem:

> *"It is often impossible to predict the outcome of litigation with a high degree of confidence. Disagreements on the law occur even in the High Court. An apparently strong case can be lost if evidence is not accepted, and it is often difficult to forecast how a witness will act in the witness-box. Many steps in the curial process involve value judgments, discretionary decisions and other subjective determinations which are inherently unpredictable. Even well-organised, efficient courts cannot routinely produce quick decisions, and appeals further delay finality. Factors personal to a client and any inequality between the client and other parties to the dispute are also potentially material. Litigation is highly stressful for most people and notoriously expensive. An obligation on a litigant to pay the costs of another party in addition to his or her own costs can be financially ruinous. Further, time spent by parties and witnesses in connection with litigation cannot be devoted to other, productive activities. Consideration of a range of competing factors such as these can reasonably lead rational people to different conclusions concerning the best course to follow."*

The process of litigation can be:

(a) Costly: parties can expect to spend at least $100,000 to $200,000 each in legal costs and disbursements if they were to continue to litigate all issues to trial. The costs associated with running a Hague Convention matter. For incoming applications under the Convention (i.e. where a child has been brought to Australia or retained in Australia) the costs of legal proceedings are fully paid by the Australian Government. In relation to outgoing applications (i.e. where a child has been taken from Australia or wrongfully retained overseas) the level of financial and legal support varies significantly. The resulting financial burden on the left behind parent in Australia can be immense;

(b) Time consuming: parties can expect to spend at least 12 – 18 months in the Federal Magistrates Court and / or the Family Court of Australia. The Family Court of Australia has put in place strategies to deal with Hague Convention matters expeditiously, and it is often no more than 3 months from the time of filing to the time of trial. This helps to ensure that Australia's obligation under the Convention to act expeditiously is met. The Family Court has also given priority to the hearing of appeals against Hague Convention decisions

(c) Emotionally draining;

(d) Disappointing in terms of outcomes: experience indicates litigants are often left disappointed with the court process. It may not address their agendas. The parties are subjected to the idiosyncrasies of the trial judge, who may not deliver a satisfactory judgment vis-a-viz the efforts poured into getting the case to trial. The parties are left to ponder appealing the decision at further cost and delay. Further there is a risk for the unsuccessful litigant of having to meet a cost order. Generally however each party does bear their own legal costs.

(e) Lacking in control over the outcome. The court process serves a purpose where the parties cannot come to an agreement for whatever reason. The judge then steps in to make a decision for the parties. As indicated above either or both of the parties may not be happy with the decision. Experience indicates that most people want to retain control over the outcome of their matter. Further an agreement struck between the parties has more likelihood of acceptance between the parties than a court imposed order.

(f) Delay parties getting on with their lives and can have long lasting detrimental effects on the parties and their children.

---

[6] Studer v Boettcher [2000] NSWCA 263

(g) Have an adverse impact on the children and the parents' relationship with the children causing irreparable damage.

(h) There are other factors that warrant consideration including the human factor of a dispute particularly in Child Abduction / Hague Convention matters requiring support and at times a solution outside a court room.

> *"Our members also note that there is an absence of a support service that offers emotional support to parents who have experienced child abduction or are trying to manage a child on return. The lawyers and the staff at the Attorney General's Department involved in discharging convention obligations are focused on the law and the process of securing the return of children. They are not qualified to provide the required emotional support to distraught parents and dislocated children. Such support has been identified by parents who have been involved in the convention process as something that would have been "incredibly helpful and reassuring"*[7]

I suspect the above is a universal theme.

The advantages of mediation

The advantages of mediation over litigation are many including:

(a) Mediation offers an informal means of resolving disputes, without the need for preparation of expensive documents and without the need for attendance at court events: avoids adversarial and costly legal battles.

(b) Mediations take place at a time and location to suit the parties and the mediator.

(c) Mediation offers an opportunity for parties to tailor the resolution of their dispute to suit their circumstances: allows for creative solutions.

(d) Mediation is private and allows parties to retain control over the outcome.

(e) Mediation usually costs much less for a family than litigation with the result that more of the family's property is available to the parties and their children.

(f) As the Hon. Brian Jordan and Peter Sheehy stated in relation to mediation in Australia:

> *The ADR Revolution in Australia has been 30 years in the making. There have been many false dawns in that time but there can no longer be any doubt that ADR has arrived as an integral and expanding component of all areas of practice in the law including and perhaps particularly in practice in family law. Courts and Governments throughout the country are embracing various forms of alternate interventions as a result of addressing the communities concerns about the costs and delays associated with litigation and more particularly the adverse impacts of the adversarial systems upon families.*[8]

(g) Further the Hon. Brian Jordan offers:

> *Of course, litigation will always remain an essential part of the landscape in family law. There are categories of cases and perhaps categories of clients in need of judicial determinations. Although only 5% of cases filed proceed to Judgment, many of the remainder would not move towards settlement without the reality or spectre of legal compulsion available in litigation processes. However, my long experience on the Bench causes me to strongly observe that, notwithstanding the eventually high settlement rate, there are nevertheless an alarmingly high percentage of cases filed, that either should have never entered upon the litigation pathway or,*

---

[7] International Social Service Australian branch and the Commonwealth Attorney Generals Department, " Living in Limbo – the experience of International Parental Child Abduction", February 2005, page 24

[8] Hon. Brian Jordan and Peter Sheehy, "Mediation in Property Matters – Practice and Reform", TEN 4th Annual Family Law Conference Gold Coast Queensland July 2010

alternatively, should not have remained there for so long. Indeed, in my view, a significant portion of the so-called intractable 5% that entered my trial lists remained entirely susceptible to resolution between the parties as was evidenced by the perplexing number of cases which settled at the door of the court or during the course of the trial..... The legal profession needs to be pro-active in exploring more appropriate ways of addressing their clients' relationship issues. In most cases, mediation/ADR provides a proper and preferred avenue towards resolution. The use of these options in a timely fashion is likely to provide a better, less costly and more timely outcome for your clients and, at the same time, contribute to the reduction of the pressure upon both our court systems and upon our governments to increasingly look beyond the profession in family law.

Judge Robert W. Wooldridge Jr. (ret.) in a paper he delivered "Mediation of Family Law Cases" at the IAML USA and Canadian chapters meeting at San Juan, Puerto Rico in February 2010, identified the following advantages of mediation in family law:

(a) It allows parties to speak and be heard in a cathartic manner;

(b) A mediator can help temper a client's unrealistic expectations;

(c) The parties retain decision-making power

(d) Mediation is cost effective;

(e) Creative solutions are available;

(f) Resolutions outside the courtroom help preserve relationships;

(g) Mediation can be empowering

(h) Best interests of the child: *if custody is at issue, a mediator can help impress upon the parties that the "best interests of the child" is the guiding principle that courts will follow. A mediator can help them understand that the court will look to what is in the child's best interest, not theirs.*

Mediation affords parties to privately order their arrangements without further judicial intervention other than approving the terms of any agreement reached. Agreement may be reached through mediation:

(a) On terms for the orderly return of the child(ren) on the giving of undertakings[9] and avoiding prosecution; or

(b) To vary the substantive parenting orders to facilitate the relocation of the child(ren) to the new country and provide the left behind parent with contact with the child(ren). Such agreements usually contain extensive provisions including mirror orders.

Mediation is qualified – not every case can or ought to be mediated (e.g. where there is serious power imbalance in a highly dysfunctional relationship, mental illness, adjustive dissonance (negative intimacy), where there are allegations of family violence or child abuse: then you would be cautious about engaging in mediation). Mediation in international parental child abduction cases *usually arises out of a complex and extreme breakdown in the relationship between parents and frequently causes acute emotional distress to both parents involved, and most importantly to the abducted children.*[10] The recent and ongoing series of *Garning* cases[11] in Australia involving a mother and the children based in

[9] The Australian Government has agreed to introduce new legislation providing the Commonwealth Director of Public Prosecutions with the ability to give an undertaking that prosecution for IPCA offences under the Family Law act will not be pursued if a child is returned to Australia under the Hague Convention. It is envisaged the legislation dealing with the function to give an undertaking not to prosecute will list the criteria to be considered in making that decision, including a recommendation from the Commonwealth Central Authority relating to the offence in light of Australia's obligations under the Hague Convention.

[10] Denise Carter OBE "The use of mediation in relocation cases"

[11] Department of Communities (Child Safety Services) & Garning [2011] FamCA 485
Garning & Director –General, Department of Communities (Child Safety Services) [2012] FamCAFC 35; Director –General, Department of Communities (Child Safety Services) & Garning [2012] FamCA 342; Director –General, Department of Communities (Child Safety Services) No. 2 & Garning [2012] FamCA 353; Garning & Director –General, Department of Communities, Child Safety & Disability

Brisbane and the left behind father in Italy has played out the extreme emotions with allegations of abuse leveled at the father, the children running away from their mother and the eldest daughter allegedly having suicidal ideations in response to orders requiring the children to return to the home state of Italy (Florence); all under the scrutiny of the Australian public as it is the subject of intense scrutiny of a media driven circus.

Further the existence of a legal system and court process regarding international parental child abduction is important to the mediation process. Parties in mediation do not conduct themselves in a vacuum rather they negotiate in the shadow of the law. The law provides an impetus for the parties to reach agreement at mediation. Mediation complements and operates within the structure of a legal system. Importantly the legal system provides the framework and regulation of the mediation process. "In child abduction cases a preliminary ruling is often given by the court prior to the parties attempting mediation (e.g. The Netherlands, New Zealand and Sweden). Where mediation is unsuccessful then parties can readily access the court process to continue and resolve the problem.

Agreements reached in mediation per se are not legally binding. Parties require the legal system to give full force and effect to the agreement reached. This can be achieved with court order (and it is suggested where possible mirror orders be taken out in the competing jurisdictions). To facilitate an expeditious resolution of the matter across both jurisdictions it may be possible with the co-operation of the network of liaison judges in Hague matters from country to country to achieve this. Where the two jurisdictions recognize, enforce and register agreements then entering an agreement / parenting plan may be an option.

International family mediation in Australia

For the past 15 years, mediations have been part of my day-to-day practice as a family lawyer out of Brisbane, Queensland. Indeed for the past 6 years parties in family law proceedings (both financial and parenting disputes) are required save in limited circumstances to undertake pre-action procedures including attempting to settle their matter via an ADR process. The *Family Law Act 1975* (Cwth) provides for Primary Dispute Resolution under Part III. Typically mediation is the preferred option pursued by most parties. By dint I have been involved in more mediations over that time than contested trials. From 1 July 2007, in all parenting disputes in Australia the parties are required to undertake compulsory family dispute resolution mediation with an accredited FDR practitioner prior to instituting proceedings for parenting orders in court. Parties must obtain a section 601 certificate from the FDR practitioner at the conclusion of the mediation for filing with their application.

Jill Howieson of the University of Western Australia in her study in *Family Law Dispute Resolution: procedural justice and Lawyer-Client Interaction*[12] reported:

> *Australian family lawyers belong to a cohesive legal culture and predominately take a conciliatory and constructive approach to practice...Family law clients prefer the conciliatory and constructive family lawyer to the adversarial type of family lawyer....the manner in which the clients view the quality of treatment and quality of decision making from the lawyer is integral to how the clients rate the fairness of, and their satisfaction with, the lawyering experience...Lawyers practicing in Queensland had a significantly lower adversarial orientation than those lawyers practicing in South Australia and Victoria. Lawyers practicing in Queensland reported using problem solving negotiating behaviours significantly more often than those lawyers practicing in Victoria, Western Australia and South Australia; and Victorian lawyers displayed a greater adversarial orientation and take more matters to trial than lawyers do in other states of Australia, and in particular, more than those in New South Wales and South Australia (this result is in part explained by the number of Victorian barristers who responded to the survey...*

Having said so, I must show my hand and disclaim having undertaken any mediation in child abduction or Hague convention matters. Indeed generally it has not been the practice of Central Authorities in Australia (CCA and SCAs) and litigants in Hague Convention matters and litigants in other child abduction matters to pursue mediation as a means of

---

Services [2012] FamCA 354; Garning & Director –General, Department of Communities, Child Safety & Disability Services [2012] FamCA 482; Garning & Director –General, Department of Communities, Child Safety & Disability Services (Discharge of return order) [2012] FamCA 565; RCB as Litigation Guardian of EKV, CEV, CIV and LRV v the Honourable Justice Colin James Forrest, One of the Judges of the Family Court of Australia & Ors [2012] HCATrans 178;

[12] Faculty of Law University of Western Australia, Nov 2009

resolving the dispute, at least until recent times. I will shortly address the establishment of international family mediation services by the ISS in Australia.

I have canvassed a number of my peers in Brisbane with profile in Hague Convention matters and mediation generally regarding their experience in international family mediation for child abduction matters. The responses I received were as follows:

(a) Helen Tooth, Team Leader, Department of Communities, Child Safety and Disability Services (Central Authority) (Brisbane, Qld): *"I probably don't have much to contribute as we do not necessarily look at mediation in the first instance when dealing with Hague applications...."* Helen was entirely au fait with international family mediations and was able to provide some important resources to me. Helen subsequently spoke with me about the mediation of child abduction matters and the work of the ISS in Australia (which I refer to below) and the good work of Anne-Marie Hutchinson and Reunite in the UK. Helen highlighted some of the fundamental issues concerning such mediation at the grass roots level. Helen notes there are two schools of approach to mediation of child abduction matters:

(i) The purist school hold fast to the purpose of the Hague Convention and its jurisdictional function only to ensure the correct forum determines the underlying parenting dispute. Fundamental to their position is steadfastly holding to the Convention's purpose to facilitate the child's return to the jurisdiction deemed to be the one most appropriate to determine parenting arrangements (and not the determination of parenting arrangements per se which the Convention assumes the courts in the child's country of habitual residence are best able to make decisions about the best interests of the child). For obvious reasons it is premature to be determining the parenting issue and undermines Hague proceedings possibly giving rise to acquiescence (at least an argument). Mediation is the anathema to a strict approach to a Hague proceeding. This school tends to adopt an adversarial approach and it is the position which the Central Authority (at least in Queensland) is more aligned to; and

(ii) The broader more holistic school that recognizes mediation at an early intervention point may be able to address and solve the source of the parenting problem that has led to the international movement of the child and institution of proceedings. This school is more likely to embrace international family mediation as a process of attempting to resolve the dispute.

Arguably in respect of both schools *never the twain will meet.*

Helen recognized the international perception that Australian courts were weakening the application of the strict / purist approach to the Hague Convention, which understandably is cause for consternation within the international family law community.

Helen identified the Chief Justice of the Family Court of Australia, Diana Bryant as an advocate for the mediation process in these circumstances, particularly in cases where mothers take flight from the children's habitual residence to return to the mother's country of birth and extended family upon a separation. Two weeks ago the Chief Justice when addressing the Queensland Law Society Annual Family Law Residential on the Gold Coast spoke of the development of mediation in Hague and other child abduction matters. The Chief Justice stated that two people are currently receiving training to become specialist international family mediators.

Helen also identified factors that possibly distinguish the prospects of success of international family mediations in Australia and New Zealand from Europe for instance. When discussing the success of mediations in the UK under Reunite, Helen noted an important distinguishing feature between Australia / NZ and Europe is the geographical isolation. In Europe it may be possible to address Hague and child abductions more successfully in mediation due to the close proximity of the subject states. In Australia those matters are akin to relocation cases between states within Australia and between Australia and NZ. However when cases involve Australia and a European state or the United States or one of our closer Asian neighbours (e.g. Japan) with the tyranny of distance, then the stakes are high (including the prospect of prosecution, jail, fines or variation of the parenting order for offenders) and arguably makes the mediation process more difficult (or unattractive to the parties).

In Australia it is an offence to take a child out of the Commonwealth of Australia in the face of an extant parenting order without the consent of the other parent or order of the court.[13]

Helen also highlights the problem with the selection of mediator in such mediations. Helen questions the merit of engaging a mediator from the state where the children have been taken. Helen's view is that it is preferable to engage a mediator in the home state where the absent or left behind parent is situated. Further Helen acknowledged the co-mediation approach and noted this is being promoted by ISS but considered it also has potential shortcomings including where communication and translation between the mediators can break down and where each mediator holds a different concept of the mediation model.

(b) Professor John Wade, internationally renown and respected mediator and a pioneer of mediation in Australia (Gold Coast, Qld): *"I am not much assistance on the mediation of abduction cases. I have mediated a few – all where the child(ren) has already been brought back to Oz. In one sense, they are no different to any other problem solving analysis except for the tears:-*

(i) develop a relationship with each of the parents, and with older child (over the phone with the older child);

(ii) draft a standard list of problem solving questions

(A) (eg in which country should the children live? –

(1) *in the short term?*

(2) *In the long term?*

(B) What contact with the absent parent?

(C) What arrangements for visits each way to the absent parent and other country?

(D) How will these be paid for?

(E) How often will agreed arrangements be reviewed?

(F) By what process should discussions take place when there are problems and bumps?

(G) At what age will each child be able to make residential choices? Etc

In each of these cases, there were tense settlements reached. However, in each of the cases, the older children voted with their feet and changed the residential arrangements within the following two years."

(c) Hon. Brian Jordan, retired Family Court judge and mediator (Brisbane, Qld). During his time on the bench Brian heard and determined many prominent Hague Convention cases[14]. Despite his experience as a mediator and a likely candidate to undertake international family mediation, to date Brian has not undertaken any such mediation. Brian however recognized the utility of international family mediations for child abduction matters and probably based upon he being at the coalface in many contested Hague proceedings.

---

[13] sections 65Y and 65Z of the *Family Law Act*

[14] Panayotides & Panayotides (1997) FLC 92-733, Emmett [1995] FamCA 77, State Central Authority & Uurainen (No.2) (2008) FamCA 1046, Department of Child Safety & Butler [2009] FamCA 740, Merrell & Department of Child Safety [2009] FamCA 290; Department of Child Safety & Jarrett and Anor [2009] FamCA 283; Department of Child Safety & Hunter [2009] FamCA 263; Richards & Director-General, Department of Child Safety [2007] FamCA 65; Central Authority and Perry; Attorney-General for the Commonwealth (Intervener) (1996) 20 Fam. L.R. 380; Department of Child Safety & Downs-Hopman [2009] FamCA 808; Department of Child Safety & Herd [2008] FamCA 989; Department of Child Safety & Starky [2009] FamCA 774;

(d) Geoff Sinclair (Solicitor, Barry.Nilsson, Brisbane Qld and Chair of the Family Law Section of the Law Council of Australia) who has been involved in many Hague convention cases indicates that he has not undertaken a mediation in international parental child abduction matters but is aware that Ian Kennedy AM has undertaken at least one mediation.

In Australia there was initially a resistance to embrace mediation as an acceptable mode of resolving disputes in family law matters. The lead in time to take up mediation was significant. However once the momentum kicked in and both government and the court required parties to undergo ADR before litigating as a last resort, mediation has become entrenched as a part of any family law dispute in Australia. With that in mind, the Government's resourcing of ISS for international family mediation, the training of specialist international family mediators and the Chief Justice's support - the more specialized international family mediation is an emerging practice. I anticipate it will eventually become part of the culture or framework of practice in some (not all) child abduction matters in Australia.

A More Global Perspective

> *There is much enthusiasm surrounding the development of mediation to handle cross border disputes concerning children, but little practice.* (Sarah Vigers [2010])[15]

I set out in the table below a summary of the papers on the topic of "*Is mediation suitable for international cases?*" presented at the IAML 25th Anniversary meeting at Harrogate in September 2011 highlighting where international family mediation for child abduction matters is being conducted:

Country	Author and paper	International family mediation is undertaken in child abduction matters: yes/no & author's comment
Hong Kong	Robin Egerton, *Mediation and other forms of ADR in cross-border matters under Hong Kong Law*	*Not as yet.....A Mediation Bill is to be put before LEGCO by March 2012.*
Canada (Ontario)	Stephen Grant, *Mediation and other forms of ADR in cross-border matters under Canadian Law (in Ontario, at least)*	*We use these forms of ADR in any type of case including relocation ("mobility").... There is no specific statute or legislation dealing with mediation.*
South Africa	Jacqueline Julyan SC, *Mediation and other forms of ADR in cross-border matters under South African Law*	*There is no peremptory mediation (in cases of child abduction), and indeed in Hague Convention cases the Family Advocate is the Central Authority. This creates ambiguity in that the Family Advocate plays a mediatory role in domestic cases, but an adversarial role in child abduction disputes....there is no effective formal framework in place for mediation and it is voluntary, not prescribed, other than in the barely comprehensible provisions of the Children's Act.*
Australia	Ian Kennedy, *Mediation and other forms of ADR in cross-border*	*The role of the Court in Hague matters is essentially to determine whether the child should be returned to the jurisdiction from which it has been taken so that the Courts there can determine the issues relating to its welfare. However mediation may be encouraged to see whether*

[15] Mediating Cross –border Disputes Concerning Children, [2010] IFL 118

	matters under Australian Law	*parents can reach an agreement either for a structured return, or for the child to remain in the new jurisdiction rather than be sent back only to have the Court in the originating jurisdiction give permission for removal in any event.* *Non-Hague cases are slightly different in that the Australian courts prima facie have jurisdiction and must consider the best interests of the child in deciding whether the foreign forum should be left to determine custody. Again, mediation may be a useful tool in assisting parties to come to agreed arrangements which give the best effect to the child's interests.* *Mediation, arbitration and family dispute resolution in Australia are governed by the provisions of the Family Law Act (as amended) and associated Statutory Regulations and Rules of Court.*
Austria	Dr Alfred Kriegler, *Mediation and other forms of ADR in cross-border matters under Austrian Law*	*There is no relevant experience in Austria about cross-border mediation and other forms of ADR according to my knowledge....In May 2004.. § 99EheG has been replaced with the ...civil mediation code [Federal Act on Mediation in Civil Matters]*
England and Wales	Angela Lake-Carroll, *Is mediation suitable for international cases?*	*Reunite offers a specialist mediation service where parents are able to make informed decisions and reach workable solutions that are acceptable to them both and which are focused on the best interests of their child.* *Typically, mediation s offered in cases of:* • *International parental child abduction / wrongful retention – involving both Member States of the 1980 Hague Convention and non-Hague Convention States.* • *Prevention of abduction – where a family is separating and there are links with another country* • *Contact across international borders* • *Relocation where one parent wishes to reside with their child in a different country.* *Matters considered within mediation are:* • *The emotional needs of the child* • *Country of habitual residence* • *Parental responsibility* • *A schedule for contact between the child and non-resident parent* • *Travel arrangements for contact* • *Exchange of information regarding the child's education and*

		wellbeing *The mediation model was devised for co-mediation due to the complexity of cases of international parental child abduction and the required speed of the mediation process to conform with the timing of the Hague proceedings.* *The fee for mediation is £1,500 for up to three 3 hour mediation sessions - £750 to be paid by each parent. However, Reunite holds a full Public Funding Franchise from the Legal Services Commission, and so if a parent is eligible for legal aid then there will be no cost to the eligible parent/s for mediation.* *Family mediation in England and Wales is primarily an informal out of court practice in private family law matters. ...From 6th April 2011, a new pre-Application Protocol was issued requiring all potential applicants for a court order ...to consider with a mediator whether the dispute may be capable of being resolved through mediation.*
European Parliament	Sir Peter Singer, *The EC Mediation Directive Strikes Back*	Sir Peter Singer highlighted an *elephant trap* in Article 7 of the EC Mediation Directive16 which exports throughout Europe and arguably elsewhere when there is a cross border dispute involving a party domiciled or habitually resident e.g. in England, *an invasion of the quasi-confessional principles of mediation privilege* where it is necessary for overriding considerations of public policy or disclosure is required to enforce the agreement.

Further Lisa Parkinson in Chapter 14 of her text, "Family Mediation: Appropriate Dispute Resolution in a new family justice system" addresses international family mediations and future directions amongst a number of European states. In her work the following is identified in relation to mediation of child abduction matters:

Country / State	International family mediation is undertaken in child abduction matters
Switzerland	*The Federal Code [of Civil Procedure introduced on 1 January 2011] also recognizes that mediation has an important preventative role in reducing risks of parental child abduction in international cases. Under the Swiss Federal Act on International Child Abduction of 1 July 2009, mediation is compulsory when application is made for the return of a child abducted into Switzerland from a Hague Convention member state (see arts 4 and 8). A central Swiss authority is responsible for establishing a network of experts and institutions that are capable of acting expeditiously in giving advice, undertaking mediation and representing individual children. The Swiss measures could be incorporated in amendments to the Hague Convention and adopted at multilateral level, serving as a model for other States wishing to improve their practice in parental child abduction cases.*[17]

The honourable Lord Justice Thorpe in *Al-Khatib v Masy*[18] held[19]:

---

[16] Directive 2008/52/EC of the European Parliament and the Council of 21 May 2008 which came into force throughout the European Union (other than Denmark)

[17] Chapter 14, 14.1.12

[18] [2004] EWCA Civ 1353

[19] at para [17]

There is no case, however conflicted, which is not potentially open to successful mediation, even if mediation has not been attempted or has failed during the trial process.

Mediation in child abduction matters has proceeded in two different ways:

1. Single-state mediation where the mediation take place in the State of refuge under the procedures of that State (which begs the issue and controversy of which State is the appropriate state, some suggest it should be the home State):

    a. *'Although there have been concerns expressed that parties may feel that the mediator from their country will be in favour of an individual from their own country (Zawid p39), it is also very possible that, in providing this type of balance of nationality, culture, psychological and legal backgrounds, gender, and language, the parties may feel a greater sense of comfort and familiarity. This could meet the needs of the party who highly values impartiality (no conflict of interest, no pre-existing relationship) and the party who desires familiarity (commonality of culture)'*.[20]; and

2. Bi-national co-mediation where mediation occurs across the two different states using two mediators, one from each State (which raises the issue and concern as to whether the mediators are following the same process).

Importantly in child abduction cases it is suggested best practice to ensure that the child has a voice in the process (whether the mediation is child focused (indirectly engaged) or child inclusive (directly engaged)). The Child focused approach seems to be dominant.

Also in international family mediations it is also important to "*acknowledge the importance of extended family in collective cultures...if there is also a power distance within the family, the family member with higher power than the abducting parent may be an effective participant in mediation to place pressure on the abducting parent to follow the agreement...in choosing a mediator in international child abduction cases, it is important to consider the power distance values within the two cultures....Cultural sensitivity must be a paramount consideration in international abduction cases....In developing mediation protocols for dealing with international abduction cases, cultural awareness and understanding will be a key to the effectiveness and the credibility of any program and mediator.*"[21]

Whilst ultimately the choice of mediation approach remains a matter for the parties to determine the important issue for the parties and mediators should not lose sight of is: it is the procedural rules rather than substantive laws which are engaged.

Sarah Vigers highlights that mediation is being addressed in a number of international meetings, cross border instruments concerning children drafted recently and on the agenda of related international organisations including the Hague Conference on Private International Law and the Council of Europe and the European Community.

However as noted above it seems apart from the United Kingdom and Switzerland there is little if any mediation activity in international parental child abduction matters.

Sarah Vigers identifies 3 broad areas explaining the possible difference between widespread discussion and support of international family mediation and its limited use:

1. disparity in the definition of "mediation" across jurisdictions:

    a. "mediation" is not necessarily well understood.

    b. "mediation" is defined in various pieces of legislation and codes across different jurisdictions with similar but not exactly the same text, which lends itself to different forms of mediation.

---

[20] Meierding, Nina, article "Mediating across cultures: Cross-Cultural Issues to consider in the Mediation of International Child Abduction Cases", published in The Judges' Newsletter, Special Edition No.1, 2010, p 80

21 Meierding, supra p80

c. Mediation is used in different contexts: *"both broadly to describe any process which promotes agreement between parties with the assistance of a third party and narrowly to refer to one specific dispute resolution process*[22] [cf collaborative practice, conciliation etc]." Legislation and cross border instruments tend to focus on the agreement more than the process.

d. The narrow use of the term mediation is featured by different practices and methodologies within and across jurisdictions.

e. Note Vigers also refers to substantive differences in each jurisdiction such as the position with respect to confidentiality and the application of privilege to the mediation process, which can create an imbalance and undermine the utility and prospects of success in mediation. This ought to be overcome with confidentiality clauses in agreements but care ought to be taken as to jurisdictions where such clauses cannot oust the contrary law.

2. the added value of mediation needs further research:

   a. *the value of facilitating agreement, promoting party autonomy and encouraging private ordering in disputes concerning children is generally accepted.*[23]

   b. *It is considered that where the parties intend to have some form of ongoing relationship there is benefit in a discipline which seeks to assist parties to negotiate an agreed outcome rather than the adversarial process which can result in the perception of a "winner" and a "loser".* I suggest that in most cases this will apply. Notwithstanding the parties may be at their lowest ebb with each other following an international parental child abduction, the reality remains for them that they need to maintain a relationship of sorts to deal with each other concerning issues arising regarding the care, welfare and development of their children at least until those children attain majority (and beyond e.g. dealing with their adult children and grandchildren). Mediation has the prospect of restoring a modicum of civility and dignity to that relationship whereas litigation can irreparable damage the parent-parent and parent-child relationship.

   c. *Research has shown that family mediation can improve parental communication and reduce conflict as well as promoting ongoing contact between a child and non-resident parent. There is evidence that having reached agreement parents are more likely to be able to continue to reach agreement in the future without the need for further intervention.* [24] Indeed these are the mantras we use in Australia to justify mediation to clients.

   d. Vigers recognizes the research to date is limited and whilst the benefits obvious on a domestic level are assumed to apply to cross-border matters where hostility is intensified and geographic proximity presents challenges and there is an added layer of complexity dealing with two competing jurisdictions and forums: *"There is to date very little empirical research in England in the context of child abduction cases in England. Further research is needed regarding when and how mediation might be a beneficial alternative to the court process.*[25]

3. there are issues raised by the use of mediation in a cross-border context which have yet to be fully discussed at the international level:

   a. Vigers suggests *cross-border mediation should where possible be established under special structures and should not rely on the domestic family mediation system.*[26]

---

[22] supra p118
[23] supra p119
[24] supra pp 119-20
[25] supra, p120
[26] supra p120

b. There is a benefit in concentrating the practice in a limited number of specialists (mediators) and learning from established good practice in cross –border dispute resolution. Such benefits include:

   i. *The development of expertise as a smaller number of practitioners are involved*;

   ii. *The ability to introduce special rules in the cross-border context without prejudice to domestic family mediation systems*; and

   iii. *The ability to move forward with cross-border mediation notwithstanding diversity and lack of harmony currently existing in domestic systems.* [27]

c. Vigers also calls for specialist training of mediators involved in international family mediations concerning child abduction:

   i. *Mediators must be knowledgeable regarding the particular international legal context in which the dispute is taking place*;

   ii. *Cross border mediators must receive training with regard to mediating in the cross cultural setting.*[28]

Sarah Vigers concludes there is a need for a formal definition of mediation. This is important in international family mediation to ensure parties understand the process they embark upon and for instance in co-mediation the mediators are "singing from the same hymn sheet" practicing the same process in their different States to be effective.

It seems the beacon of hope for international family mediation is the reunite experience:

> *Since 2002 reunite has been offering a mediation service in cases of cross-border family disputes involving children, where cross-border is defined as where parents have, or are about to have, their normal residences in different countries. Typically we offer mediation in cases of international parental child abduction, prevention of abduction, contact across international borders, and leave to remove a child from one legal jurisdiction. The mediation focuses on the best interests of the child, ensuring that the child continues to have a positive relationship with both parents and their extended family. To date we have mediated in approximately 100 cases, the majority of which have involved the 1980 Hague Convention, but we are now mediating in an increasing number of non-Hague Convention cases involving countries such as Egypt, Pakistan, Algeria, Dubai and India.....From feedback received from parents who participate in mediation, the most important consideration for them is the professionalism, neutrality, confidentiality and expertise of the mediators.....Mediation is still a relatively new concept in cases of international parental child abduction and it is important that cases mediated are monitored and evaluated to consider the long-term effectiveness of the successes or failures of the mediated agreements. We also need to have a central entry point for these cases so that they can be tracked. We need to ensure that there is uniformity in the use of mediation in cross-border family disputes and that such information is fed into the Permanent Bureau so it can be cascaded out to the Member States of the Hague Convention.*[29]

ISS

The ISS was founded in 1924:

> *Cases of child abduction are core business activities for ISS social workers throughout the world. The ISS approach when handling such cases is mainly to avoid a complete interruption of relations and maintain direct dialogue between parents and relatives.*

---

[27] supra p120
[28] supra p123
[29] Denise Carter OBE, article "The use of mediation in relocation Cases", The Judges' Newsletter, Special Edition No.1, 2010

The place progressively given to mediation and alternative modes of conflict resolution in the operating framework of the 1980 Hague Convention on child abduction and the 1996 Convention on international child protection is a big breakthrough, creating space for legal procedures and processes bringing forth negotiated settlements to complement in the best interests of all actors involved in cross-border family conflicts: the families & children, administrative authorities, the judiciary and social workers.

The added value of introducing mediation in Hague procedures is clearly threefold:

(i) It helps dealing with the reality of the family context (relational, social and financial) which needs to be considered if the sustainability of agreements is expected

(ii) It helps families save a lot of money and enables administrative & legal bodies lessen human and financial resources over long periods of time;

(iii) It enhances the well-being of the family and the children.

Mediation should also be developed as a means of child abduction prevention; yet a mediation process may accompany the whole legal procedure, with a careful look at some of its critical moments, to avoid abuse of process by one of the parties, last but not least, mediation is a very strong support for the follow up of international situations, after the court's decisions.

ISS advocates for a facilitated recourse to mediation in the framework of 1980 and 1996 Hague procedures, as well as for the establishment of mediation services for cases involving countries that are not signatory to these conventions.[30]

"Practitioners should be aware of the services provided by International Social Service (an international network of services involving more than 150 countries with a General Secretariat in Geneva) which provides a range of services in relation to international parental child abduction including international mediation."[31]

ISS (Australia):

"International Social Service (Australian Branch) (ISS) is a national non-government organization delivering social work programs to children and families requiring interventions across national borders. It is part of an international network of ISS branches, units and correspondents spanning over 140 countries with overall administration in Geneva, Switzerland. ISS units across the network work collaboratively, with case work staff liaising with colleagues within the network in order to meet client needs which may span two or more countries....ISS was awarded funding by the Australian Commonwealth attorney-General's Department to offer services to parents and families affected by IPCA...

Abduction...As well as crisis counseling and emotional support, parents (whose child is abducted) are offered the opportunity to engage in contact with their child and/or the other parent via the co-operation and assistance of ISS colleagues in the relevant country. Sometimes, the informal mediation of temporary contact arrangements between the child and parent is possible, until a return order is made or parenting arrangements can be determined. Working with ISS colleagues internationally, any welfare concerns an Australian parent may have regarding their child in the care of the other parent can be investigated. Conversely, through ISS overseas network, ISS Australia receives referrals on behalf of parents in other countries, requesting that ISS Australia attempts to engage a parent suspected of abducting a child to Australia. In these instances, informally mediated contact arrangements or welfare checks are also offered depending on the engagement of the parent in Australia with ISS. If a parent is ordered to return a child abducted to Australia, ISS Australia case workers can assist the parent to plan the return process, including sourcing options for accommodation and financial support. Again, overseas network colleagues are a great source of support, with their knowledge of

[30] http://www.iss-ssi.org

[31] Ian Kennedy, "Mediation and other forms of ADR in cross-border matters under Australian Law", paper delivered to IAML 25th Anniversary annual meeting, Harrogate

appropriate referrals to accommodation and other material aid and domestic violence support services as required by the returning parent."[32]

I have attached to this paper relevant pages from the ISS Australia website[33] about services offered.

In March 2012 the Australian Government delivered its response to the Senate Legal and Constitutional Affairs References Committee Report on *International Parental Child Abduction to and from Australia*. The terms of reference of the Senate regarding the incidence of international child abduction to and from Australia included:

(a) The costs, terms and conditions of legal and departmental assistance for parents whose child has been abducted overseas;

(b) The effectiveness of the Hague Convention in returning children who were wrongly removed or retained, to their country of habitual residence;

(c) the roles of various Commonwealth departments involved in returning children who were wrongly removed or retained, to their country of habitual residence;

(d) Policies, practices and strategies that could be introduced to streamline the return of abducted children; and

(e) Any other related matters.

Within the report[34] the government accepted the recommendation that the Australian Government should, in consultation with relevant stakeholders such as ISS Australia, investigate strategies to improve the availability and coordinated delivery of support services in international parental child abduction (IPCA) cases, including post-return services:

The Australian Government agrees that additional resources should be provided to deliver nationally consistent support services for families in Australia in IPCA matters.

To date most applications received by the Commonwealth Central Authority under the Hague Convention have been prepared with the assistance of the State Central Authorities. However such assistance has not been available nationally, with applicants in Western Australia, the Northern Territory and the Australian Capital Territory required to seek assistance through Legal Aid Commission or private lawyers. Additionally, all costs for SCAs to provide assistance to left behind parents, including for both preparing the application and ongoing case management/communication, have been met by the Australian Government. This has resulted in duplication of costs of services to Convention applicants.

To provide a nationally consistent service to left behind parents, the Australian Government has decided to establish a centralized national assistance service for left behind parents dealing with IPCA. For a number of years the Government has provided funding to ISS to provide counseling and mediation support to families dealing with IPCA. From January 2012 ISS will also receive funding to provide a national service for legal assistance to assist left behind parents to prepare outgoing applications and documentation under the Hague Convention. Left behind parents will thus be able tom access legal assistance to prepare their Hague Convention applications and targeted counseling and social support from one service provider. Ongoing case management will be provided directly between the Commonwealth Central Authority and applicants.

Post return services are available through Australian Government funded post separation services such as Family Relationship Centres.

---

[32] Helen Freris, IPCA Service Coordinator, paper "Hague Children's Conventions: the Need for an Advocacy Response to Protect Children in the Context of Unternational Parental Child Abduction" August 2009

[33] http://www.iss.org.au

34 pages 8-9

Draft Guide to Good Practice Part V - Mediation

> *It is in the context of the Hague Child Abduction Convention that there has been most mediation practice and there is enthusiasm to continue to progress Convention mediation. Indeed the Permanent Bureau of the Hague Conference has been invited to draw up a Guide to Good Practice on the subject and Members of the Organisation have decided to follow progress in the child abduction field in order to inform the debate on the development of cross-border family mediation more generally.*[35]

I have attached to this paper the Hague Conference on Private International Law Part V – Mediation of the revised draft Guide to Good Practice.

[35] Sarah Vigers at 118

Bibliography

Aiflam; www.aiflam.org.au;

Australian Government, Attorney-General Department; "About international parental child abduction", www.ag.gov.au/Families/Pages/International familylaw;

Australian Government, "Government Response to the Senate Legal and Constitutional Affairs References Committees Report: International Parental Child Abduction to and from Australia", March 2012;

Australian Mediation Association, www.ama.asn.au/family-law-mediation;

Carter OBE, Denise, article, "The Use of Mediation in relocation Cases", published in The (Hague) Judges' Newsletter, Special Edition No.1, 2010;

Egerton, Robin, *Mediation and other forms of ADR in cross-border matters under Hong Kong Law,* paper delivered to 25th Anniversary IAML Annual Meeting Harrogate, September 2011

Freris, Helen (IPCA Service Coordinator): article "Hague Children's Conventions: the Need for an Advocacy Response to Protect Children in the Context of International Parental Child Abduction"; August 2009;

Grant, Stephen, *Mediation and other forms of ADR in cross-border matters under Canadian Law (in Ontario, at least),* paper delivered to 25th Anniversary IAML Annual Meeting Harrogate, September 2011

Hague Conference on Private International Law Part V – Mediation of the revised draft Guide to Good Practice;

International Social Service Australia, www.org.au

ISS, article, "IFM & Child Abduction" www.iss-ssi.org/2009/index.php?id=178

Jordan, Hon. Brian and Sheehy, Peter, "Mediation in Property Matters – Practice and Reform", paper delivered to TEN 4th Annual Family Law Conference Gold Coast Queensland July 2010

Julyan SC, Jacqueline, *Mediation and other forms of ADR in cross-border matters under South African Law,* paper delivered to 25th Anniversary IAML Annual Meeting Harrogate, September 2011

Kennedy AM, Ian, "Mediating Family Law Cases" presentation delivered to IAML USA Chapter meeting, San Juan, February 2010;

Kennedy AM, Ian, *Mediation and other forms of ADR in cross-border matters under Australian Law,* paper delivered to 25th Anniversary IAML Annual Meeting Harrogate, September 2011;

Kriegler, Dr Alfred, *Mediation and other forms of ADR in cross-border matters under Austrian Law,* paper delivered to 25th Anniversary IAML Annual Meeting Harrogate, September 2011;

Lake-Carroll, Angela, *Is mediation suitable for international cases?* paper delivered to 25th Anniversary IAML Annual Meeting Harrogate, September 2011;

Legal news, article, "International Child Abduction – support for Parents Left behind", 26.03.12 (www.culshawmiller.com.au/international-child-abduction-support for-parents-

Meierding, Nina, article "Mediating across cultures: Cross-Cultural Issues to consider in the Mediation of International Child Abduction Cases", published in The Judges' Newsletter, Special Edition No.1, 2010;

Parkinson, Lisa, "Family Mediation" published by Family Law (Jordan Publishing Limited) 2011 (Chapter 14, International Family Mediation and Future Directions);

Sheehy, Peter, "The Changing Face of Mediation under the family Law Act" paper delivered to the LexisNexis 9th Annual Family Law Summit, Brisbane July 2012;

Singer, Sir Peter Singer, *The EC Mediation Directive Strikes Back,* paper delivered to 25th Anniversary IAML Annual Meeting Harrogate, September 2011;

Vigers, Sarah, article, "Mediating Cross-border Disputes Concerning Children" March [2010] IFL 118;

Wade, Professor John, "Tools from a Mediator's tool-box; Reflections on matrimonial Property Disputes"

Wooldrige, Jr, Judge Robert W., "Mediation of Family Law Cases" paper presented to IAML USA Chapter meeting, San Juan, February 2010;

HopgoodGanim
LAWYERS

Geoff Wilson

PARTNER

LLB (Hons), BCom

Geoff co-manages HopgoodGanim's Family Law practice, one of the largest in Australia. He is a Queensland Law Society Accredited Family Law Specialist and has practiced in family law for over 25 years.

Geoff was named the market leader in the list of leading family lawyers in the Doyle's Guide Queensland Family Law Review for 2012. He authored the Australian chapter of 2011 legal guidebook *International Pre-Nuptial and Post-Nuptial Agreements*, published by Jordans in London.

Geoff regularly presents at industry seminars on topics as diverse as trusts, superannuation, relationship agreements, estate planning and family law, corporate structures, de facto relationships, parenting matters, drafting and evidence. He has prepared over 80 papers on family law topics throughout his career and has been a contributing author to the CCH loose-leaf Services, Australian Family Law and Practice, Australian De Facto Relationships Law, Matrimonial Property Guide and Queensland Law Handbook.

Geoff is currently the parliamentarian of the International Academy of Matrimonial Lawyers, and has been invited to present at a number of its international family law conferences. He was previously a lecturer in family law at Queensland University of Technology, and is the legal advisor to the Australian website www.pre-nuptialagreements.com.au

T +61 7 3024 0360
F +61 7 3024 0060
E g.wilson@hopgoodganim.com.au