

Clayton Utz: Pro Bono Work for Modern Slavery Victims in Australia

By David Hillard

“Slavery did not end in the 19th century, and modern slavery is not something which only happens ‘somewhere else.’”

Australia is a destination country for people trafficked for exploitation and slavery. According to its most recent published data,¹ the Australian Federal Police (AFP) received almost 300 reports of trafficking in persons, slavery and slavery-like practices in Australia in FY2022. Logic suggests that the number of unreported cases is so much higher.

For over a decade, Clayton Utz has worked alongside Anti-Slavery Australia, the Trafficking and Slavery Safe House Program at the Salvation Army and others, to explore domestic legal remedies for dozens of clients who were brought to Australia and forced into unpaid work as domestic servants, low-paid work in the food and hospitality industries, or into sexual servitude as ‘repayment’ of trafficking debts.

It is not work which we ever expected to do, but our slavery practice has resulted in some of our most life-changing outcomes. The compensation in each case will not fix what our clients have suffered. However, it recognises that what has happened was wrong, and can be substantial enough to make a real difference to our clients.

Along the way, our efforts have been supported by pro bono counsel, including recently-appointed Federal Court judge Yaseen Shariff SC, Kylie Nomchong SC, Prue Bindon, Leigh Howard and Stephanie Cheligoy.

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CLAYTON UTZ

What sort of work is involved?

A remarkable outcome (discussed below) recently saw our client receive half a million dollars in compensation. This result was built on 14 years of our pro bono slavery cases, whose highlights include:

- pioneering statutory victims compensation as an avenue for compensation for women sex-trafficked into Australia and forced to work in sexual servitude. Our work was recognised with a 2012 Freedom Award and with the Law & Justice Foundation’s 2013 Pro Bono Partnership Award with Anti-Slavery Australia;
- obtaining a 2015 judgment in the Federal Circuit Court which ordered a restaurant owner to pay \$186,000 in wages withheld from our client who was trafficked from India under a sham 457 visa arrangement and held in forced labour, living in the kitchen and working 12 hours a day, seven days a week, for 16 months;
- securing \$31,000 in unpaid wages for a 19 year old student on an internship arranged by her college in Korea. Our client thought she was coming to learn hospitality, but instead found herself working without pay for 3 months, making sushi in a Sydney CBD restaurant. She had been threatened that if she did not complete the “internship”, she could not graduate from her course back home;
- negotiating the payment of \$120,000 towards unpaid wages, from a couple who had kept our client as a slave in their suburban home;
- a landmark Federal Court decision in 2021,² where for the first time an Australian court held that when a foreign diplomat enters a contract to keep a domestic servant at their official residence, the employment contract is not protected by diplomatic immunity after the diplomat has left Australia; and

- a further diplomat decision in the Federal Court in November 2023, in a case against former Indian High Commissioner to Australia, Mr Navdeep Suri Singh, by the domestic servant from his Canberra residence. The Court found that Mr Suri brought our client to Australia, took her passport from her, and paid her less than \$10 a day, for over 17 hours a day work for more than a year, without a single day off. Mr Suri was ordered to pay \$189,000 in wages and interest. A separate hearing as to penalties under the Fair Work Act is expected in 2024. Next year, we also anticipate the hearing in a similar matter, this time involving a former Sri Lankan diplomat to Australia.

their home between 2007 and 2015. Ms N is now in her 60s and had lived in a Melbourne nursing home since October 2015 with no money, no way of returning to India, and with serious lifelong health challenges due to untreated diabetes during her time as a slave.

Ms N grew up in a village in rural India and left school aged six. The Kannans arranged and paid for her travel from India, to work in their home and to care for their three children. Ms N agreed to be paid around \$4 per day, to be sent directly to her family in India. When she arrived, the Kannans took her passport. Ms N had no contacts in Australia, no language, no money and a soon-expired tourist visa. She worked extremely long hours, seven days a week. When she left the Kannans' home unconscious in an ambulance in July 2015, Ms N was gravely ill and weighed just 40 kilograms. Mrs Kannan gave false details about Ms N's identity to the paramedics and then to hospital staff.

Clayton Utz was instructed by Anti-Slavery Australia in July 2021 to assist with bringing an unpaid wages claim for Ms N under the Fair Work Act. Alongside these proceedings, we negotiated with the Commonwealth Attorney-General for what turned out to be the first order ever made under the Proceeds of Crime Act. The order paid Ms N what she should have been paid under Australian law for the long hours she had worked, every day for 8 years, without a day off. The money recovered will be enough to finally get her home. ■

Footnotes

1. Commonwealth Attorney-General's Department, Targeted Review of Modern Slavery Offences Findings Report, August 2023, Table 1, p22.
2. *Mahmood v Chohan* [2021] FCA 973.
3. *Shergill v Singh* [2023] FCA 1346.

“In August, the Clayton Utz pro bono team secured \$485,411 for Ms N, thanks to an extraordinary direction from the Commonwealth Attorney-General under the Proceeds of Crime Act. The payment represented unpaid wages across years of servitude, and came out of the assets seized by the AFP from Ms N's convicted slaveholders.”

The largest amount ever recovered by a victim of slavery in Australia

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Those slaveholders were Melbourne couple Kumuthini & Kandasamy Kannan, who were convicted and gaoled in 2021 for keeping Ms N as a slave in



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