



## Queensland Court finds aged care provider responsible for sexual assault of their employee

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In a decision of the District Court in Queensland (in late 2024), Blue Care, an aged care and retirement living provider, has been found liable to pay one of their workers, Madison Gilmour, \$240,000.00 in [worker's compensation](#) as a result of her suffering significant PTSD due to being sexually assaulted by a resident in a hostel that housed predominately men with mental health issues.

The employer claimed that it was not “reasonably foreseeable” that their employee could be at risk of injury (including sexual assault and the subsequent psychological injury) in such a facility.

The case is an interesting one for workers who have suffered psychological injury in the workplace due to sexual assault or harassment, as the Judge did not accept the Defendant’s (Blue Care) argument that it should not be held responsible as it had no notice at all of the assailants’ propensity to sexually assault its worker.

### Judge critical of employer’s defence that injury was “not reasonably foreseeable”

Historically, courts have been inclined to take on board an employer’s defence that ‘this type of thing has never happened to any of our staff before, so what were we to do?’.

The Judge addressed this argument, noting (at paragraph 38):

*[38] The nature of the society in which we live denies that an employer who sends a young woman alone to a hostel predominantly housing men with mental health and addiction problems cannot foresee a risk of a sexual assault. In my view it is a genuine risk in*

*today's society. That Blue Care was not aware of any other assaults does not mean that there were no other sexual assaults or that there was no real risk of a sexual assault.*

The Judge, in further addressing the employer's point that it had no prior knowledge of any previous sexual or other serious assaults in this particular workplace, noted (in the context of individuals not disclosing that they have been the victim of sexual assault):

*"It is now readily accepted that there may be good reasons why a person who is subjected to a sexual assault will hesitate in making a complaint or even refrain from making a complaint about a sexual offence."*

## Further defences put forward by the employer

The employer tried to make something of the injured worker's inconsistent reporting/recording of what happened immediately before, during and after the sexual assault occurred. The Judge was quick to dismiss this point by referring to the now well-accepted concepts of the impact on the memory of survivors of sexual assault (whether in the workplace or elsewhere).

The employer also tried to convince the Judge that Ms Gilmour contributed to her injury in her failure to follow their direction to her to only provide services to Blue Care clients (the assailant, Mr L, was not a client of Blue Care). The Judge did not accept that the injured worker legally contributed to the cause of her injury.

## Blue Care failed to assess the risk to its injured worker

The Judge was critical of the general approach of Blue Care to servicing clients in this particular environment (men with serious mental health and/or addiction issues) in the same way it serviced clients in the general community.

In other words, the Judge was making the important observation that it was incumbent on Blue Care to consider the particular risks/issues/aspects specific to this care facility when considering what specific risks might be present for its workers who were required to attend it.

Thus, the employer's initial defence that it wasn't reasonably foreseeable that Ms Gilmour might be sexually assaulted by another resident whilst at this hostel, failed to gain any traction with the Judge.

## Court determines Blue Care breached its duty of care to its injured worker

The concept of "duty of care" is one of the most critical aspects of any personal injury case, including worker's compensation claims. An injured worker seeking damages (compensation) for a breach of duty of care by their employer must carefully consider what could have been done by the employer, which would have, on the balance of probabilities, avoided or mitigated the risk of injury.

The Judge determined that Blue Care breached its duty of care to the its injured employee in the following ways.

Failed to perform its own 'risk assessment' of the hostel when it required the Plaintiff (the injured worker) to work there.

Failed to take adequate precautions or provide training or warnings as to the dangers present at the hostel. The Judge determined that Blue Care's training did not guard against the risk of a sexual assault committed in the circumstances where a personal care worker provided assistance to another (non-Blue Care) resident, notwithstanding the fact that the employee was not paid to perform services for non-Blue Care residents of the hostel.

Failed to require workers to attend and work in pairs. The employer again argued that as it had no knowledge of (notice of) the propensity of other residents to act in the way this particular resident did (in sexually assaulting the worker), there was no requirement to establish a system of work where two workers were to attend this hostel at the same time. The Judge (again) rejected this proposition and reiterated that the relevant risk in this case (that a single female worker might be sexually assaulted in such an environment) was such that it warranted a response by the employer, which included assigning two workers to be working at the same time, and in close proximity to each other.

## Court finds causal connection between the employer's failings and the worker's injury

Another significantly important aspect of a personal injury case is called "causation". In short, it must be proven that the conduct and/or actions of one party (in this case, the employer) caused injury to another person (in this case, the injured worker).

Courts are mandated (by the common law and certain requirements provided by statute) to ascertain whether steps that could have been taken would have, in fact, prevented an act/event from occurring.

In this case, Her Honour determined that 'but for' the above-noted failures of the employer and breaches of its duty of care, Mr L (the assailant at the hostel) would not have sexually assaulted the worker. The Judge said that having two workers present at the same time would have deterred Mr L from attacking the worker.

The Judge determined the case against Blue Care and awarded Ms Gilmour \$240,000.00 plus costs.

## Get help from a worker's compensation lawyer

At CHCL, we have significant experience in worker's compensation claims, including claims involving a breach of duty of care on the part of the employer. Claims involving negligence are often complex and complicated. It is crucial that injured workers who are seeking damages due to negligence engage an experienced worker's compensation lawyer to ensure their rights and entitlements are maximised.

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