



# Crossing Borders in Construction: Unpacking the Lendlease v BCS Case

**Case Note: Lendlease Building Pty Ltd v BCS Airport Systems Pty Ltd & Ors  
[2024] QSC 164**

## Overview

Cross-border construction projects often bring unique legal challenges, especially when it comes to payment disputes. In *Lendlease Building Pty Ltd v BCS Airport Systems Pty Ltd & Ors* [2024] QSC 164, the Supreme Court of Queensland tackled key jurisdictional issues arising from work at Gold Coast Airport, a site straddling the NSW/QLD border. This case provides critical insights into how the Building Industry Fairness (Security of Payment) Act 2017 (Qld) operates in cross-border projects, offering valuable lessons for contractors working across state lines.

## The Parties

The plaintiff, Lendlease Building Pty Ltd (Lendlease), was the principal contractor responsible for construction works performed at the Gold Coast Airport (GC Airport). Lendlease sought a declaration that an adjudication decision issued on 6 December 2022, awarding \$995,081.18 (inclusive of GST) to the first defendant, be declared void, at least in part.

The first defendant, BCS Airport Systems Pty Ltd (BCS), was the subcontractor engaged by Lendlease to perform works related to the design and construction of the baggage handling systems at GC Airport.

The second defendant, John Tuhtan, was the adjudicator appointed to determine the payment dispute between Lendlease and BCS under the Building Industry Fairness (Security of Payment) Act 2017 (Qld) (BIF Act).



The third defendant, the Appointed Registrar, acted in accordance with their role in administering the adjudication process.

## Facts

Lendlease, as the head contractor, entered into a subcontract with BCS to install baggage handling systems at the GC Airport. The unique geography of the site posed a challenge, as the New South Wales (NSW) and Queensland (QLD) border runs directly through the airport. Furthermore, the site was designated as a “Commonwealth Place,” meaning it was regulated under the Commonwealth Places (Application of Laws) Act 1970 (Cth) (CPAL Act).

On 22 July 2022, BCS issued a payment claim to Lendlease for \$1,215,733.23, which included a schedule of works for both the contractually agreed work and variations. Lendlease contended that many of these variations had already been paid, alleging that BCS was attempting to claim payment twice for the same works.

In response, on 5 August 2022, Lendlease issued a payment schedule accepting only \$59,282.80 of the \$1.2 million claimed by BCS. The matter then proceeded to adjudication under the BIF Act. Lendlease argued that the payment claim was invalid due to the cross-border nature of the work, which included both QLD and NSW locations. According to Lendlease, the BIF Act did not apply because the work performed across state lines could not be easily distinguished.

On 6 December 2022, the adjudicator awarded BCS \$995,081.18, rejecting Lendlease’s submissions regarding the cross-border complexities and variations. Lendlease then sought judicial review of the

adjudication decision, arguing that the adjudicator had exceeded their jurisdiction under the BIF Act.

## Issues

The dispute raised several complex jurisdictional and legal questions, primarily:

### Jurisdictional Issues:

- **Section 61(4) of the BIF Act:** Lendlease argued that the BIF Act did not apply to construction work carried out outside of QLD and that section 61(4) excluded any claim relating to such work. Lendlease submitted that the adjudication decision was invalid as it involved work in both QLD and NSW.
- **Geographic Nexus:** The key issue was whether s 61(4) of the BIF Act excluded work carried out in cross-border projects. Lendlease asserted that work straddling the QLD-NSW border should be subject to a bolt-by-bolt analysis, identifying which parts of the work were done in each state.
- **Commonwealth Place:** Another complicating factor was that GC Airport is designated as a “Commonwealth Place,” regulated under the CPAL Act. Lendlease contended that the adjudicator’s decision involved exercising judicial power, which conflicted with the CPAL Act.

### Procedural Fairness:

- Lendlease alleged that the adjudicator failed to properly consider its submissions regarding the jurisdictional application of s 61(4) of the BIF Act and s 4 of the CPAL Act, leading to a denial of procedural fairness. Lendlease argued that this failure constituted a breach of natural justice.



## Outcome

The Supreme Court of Queensland, presided over by Justice Sullivan, dismissed Lendlease's application to set aside the adjudication decision.

### Jurisdictional Issues:

- Justice Sullivan held that s 61(4) of the BIF Act establishes a jurisdictional limit, excluding work carried out "wholly" outside QLD. The Court rejected Lendlease's interpretation that the Act required a detailed analysis of which specific work occurred in each state. Instead, it was found that in projects where work straddles the border, an appropriate territorial nexus is maintained by the fact that the building or structure is situated partly in QLD. Thus, s 61(4) does not apply when the work is not entirely outside QLD.
- Furthermore, the Court ruled that the BIF Act did not impose an obligation on the claimant to identify which part of the work was performed in each state. The only requirement under the Act was for the claimant to identify the construction work to which the progress claim relates so that the recipient can adequately respond.

### Procedural Fairness:

- On the question of procedural fairness, the Court concluded that the adjudicator had considered Lendlease's submissions, fulfilling their obligations under s 84(2) of the BIF Act. There was no failure to provide natural justice, and the adjudicator had not exercised judicial power under the CPAL Act. The adjudication process was administrative, and the determination was subject to further challenge, not rendering the decision final or authoritative. due to the cross-border nature of the work, which included both QLD and NSW locations. According to Lendlease, the BIF Act did not apply because the work performed across state lines could not be easily distinguished.

## Takeaways for the Construction Industry

This case provides critical insights for contractors and subcontractors involved in cross-border construction projects, especially where state legislation like the BIF Act is in play:

- **Cross-Border Projects:** The ruling clarifies that construction work straddling the QLD-NSW border will not be excluded from the BIF Act merely because it involves both states. The key is whether the work is "wholly" outside QLD, and not whether the work can be precisely divided by state.
- **Payment Claims:** Claimants in cross-border projects are not required to identify the exact location of every piece of work within their payment claim. The primary obligation remains to ensure the recipient can understand the work undertaken and respond via a payment schedule.
- **Jurisdictional Limits:** Section 61(4) of the BIF Act does set a jurisdictional limit, but only where the work is entirely outside QLD. This decision prevents an overly complex analysis of work location that could hinder the progress claim process in cross-border projects.
- **Commonwealth Places:** The application of the CPAL Act to Commonwealth-designated land (like GC Airport) does not invalidate the operation of the BIF Act, as adjudication under the BIF Act is an administrative process, not a judicial one.

## More information

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