

Handshake or contract? What the Federal Full Court's decision in Cirrus v Jet Aviation [2025] FCAFC 85 teaches us about agreements without signatures

Could you be in a contract without ever signing one? If your business regularly collaborates with others on tenders, quotes, or project scoping, the recent Federal Court decision in *Cirrus v Jet Aviation* [2025] FCAFC 85 dealt with how contracts are – and aren't – formed.

Background

Cirrus, a software firm, worked with Jet Aviation (then known as Hawker Pacific) on a multi-year effort to win a New Zealand Defence Force contract. Jet was the lead bidder; and Cirrus provided crucial software to support the bid.

There were detailed discussions, technical quotes, and even a letter confirming that if Jet Aviation won the government contract, Cirrus would be "invited to participate in negotiations." Did that then mean that a contract existed between the parties?

Cirrus claimed that it did.

Jet Aviation went on to win the bid – but chose another subcontractor. Cirrus sued, claiming that there was already a binding agreement to engage them.

The Court's findings

The Federal Court said that no contract existed:

1. The language used by both parties was cautious and conditional (e.g. "should" and "subject to negotiation").
2. The documents didn't lock in key terms like price and scope. Those things were still open to be changed.
3. The parties anticipated further negotiations before any deal was finalised.
4. Cirrus itself required further correspondence before authorising use of its proposal, suggesting that the parties hadn't settled on the terms of their agreement yet.
5. Importantly, the Court reaffirmed the long-standing principle that a binding contract is only formed when both parties objectively intend to be legally bound. Exchanges of correspondence and even detailed quotes, on their own, are not sufficient.

The takeaway

1. Get it in writing. If you expect to be engaged, insist on a signed agreement or a binding heads of agreement documenting the key terms.
2. Don't rely on understandings or vague commitments. Courts will look at the precise words used by the parties in determining whether the parties intended, objectively, to be legally bound. It is not a subjective question of what one of the parties "thought" was happening.
3. Be careful with the language you use and avoid using terms such as "subject to contract" unless you really mean it. This signals that negotiations are not final and can prevent a deal from being enforceable.
4. If you are collaborating on tenders, spell out clearly what happens if the bid is successful – and what doesn't happen if it is not.
5. This case is a sharp reminder that pre-contractual conduct, even over several years, doesn't always create legal obligations. Before investing your business's time, resources or intellectual property, make sure you've nailed down the key terms of the deal on paper.

If you need assistance in reviewing or negotiating a contract, or with a contractual dispute, reach out to our commercial team.