



Supreme Court of Victoria

Practice Note SC CC 5

RedCrest Electronic Case Management System (Commercial Court)

1. INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to outline the conduct of proceedings initiated on RedCrest, the electronic lodgement, court file and case administration system currently used in the Commercial Court.
- 1.3 RedCrest is presently used for proceedings in the following judge-managed lists in the Commercial Court:
 - 1.3.1 General Commercial Lists;
 - 1.3.2 Technology, Engineering and Construction List;
 - 1.3.3 Corporations List (excluding associate judge-managed proceedings);
 - 1.3.4 Intellectual Property List; and
 - 1.3.5 Insurance List.
- 1.4 This Practice Note is to be read in conjunction with the *Supreme Court (RedCrest Electronic Case Management System Amendment) Rules 2014* ('RedCrest Rules') as incorporated into Order 28A of the *Supreme Court (General Civil Procedure) Rules 2015* (the 'Rules') and the *Supreme Court (Corporations) Rules 2013*.
- 1.5 This Practice Note is also to be read in conjunction with:
 - 1.5.1 Practice Note SC CC 1 - Commercial Court;
 - 1.5.2 Practice Note SC CC 7 - Imposition of Fees in Commercial Court judge-managed lists;
 - 1.5.3 Notice to the Profession February 2016 - Updated Practice Court Procedures (Commercial Court); and
 - 1.5.4 The How-to Guide for Practitioners (maintained and updated by the RedCrest Service Desk and available for download from the RedCrest Homepage at www.redcrest.com.au).

- 1.6 All enquiries in relation to RedCrest may be directed to the RedCrest Service Desk located in the Commercial Court Registry at redcrest@supremecourt.vic.gov.au or on 03 9603 6042.

2. COMMENCEMENT

- 2.1 This Practice Note was issued on 30 January 2017 and commences on 30 January 2017 and applies to all relevant RedCrest proceedings initiated on or after 1 August 2014.

3. DEFINITIONS

- 3.1 In this Practice Note:

Commercial Court Practice Note means Practice Note SC CC 1 – Commercial Court and any amendments thereto.

How-To Guide means the RedCrest How-to Guide for Practitioners (maintained and updated by the RedCrest Service Desk and available for download from the RedCrest Homepage at www.redcrest.com.au).

List Judge means a Commercial Court Judge who manages a List set out in paragraph 1.3.

RedCrest proceeding means a proceeding in any of the Judge- managed Lists set out in paragraph 1.3 to which RedCrest applies.

RedCrest Rules means the Supreme Court (*RedCrest Electronic Case Management System Amendment*) Rules 2014 ('RedCrest Rules') as incorporated into Order 28A, of the *Supreme Court (General Civil Procedure) Rules 2015* and the *Supreme Court (Corporations) Rules 2013*;

Registry and *Commercial Court Registry* mean the Commercial Court Registry situated on the Ground Floor, 450 Little Bourke Street, Melbourne 3000

Rules means the *Supreme Court (General Civil Procedure) Rules 2015*.

4. DOCUMENT HEADINGS

- 4.1 The heading of all Commercial Court documents filed into RedCrest should conform with the example provided at Schedule 1.

- 4.2 For RedCrest matters, the Proceeding Number will commence with the prefix 'S ECI' meaning a Supreme Court Electronic Civil proceeding.

- 4.3 Where a non-Corporations proceeding is entered in the Commercial Court, upon commencement, the Originating Process must specify the particular List into which it is intended that the proceeding be filed (e.g: 'Commercial Court' for general commercial matters; 'TEC List' for Technology, Engineering and Construction matters; or 'IP List' for Intellectual Property matters). When commencing matters suitable for the Insurance List on RedCrest, practitioners are directed to the Insurance List page on the Supreme Court website at <http://www.supremecourt.vic.gov.au/home/law+and+practice/specialist+reas+of+law/insurance/> .

- 4.4 Form 2A must be used for Judge-managed Corporations matters, which will include in the heading the list identifier 'Corporations List'.
- 4.5 After commencement, all Court documents filed in the proceeding must bear the list identifier in the document heading in accordance with the example in Schedule 1.

5. FORMS AND FILING IN REDCREST

- 5.1 Proceedings initiated on RedCrest will be initiated using the 'ORIGINATING PROCESS [REDCREST]' form as prescribed by the Rules. Form 5F will be for general usage and Form 2A will be used for Judge-managed Corporations matters.
- 5.2 An Originating Process which includes a statement of claim will, for the purposes of the Rules, be deemed to be a writ, and one which merely claims the relief sought will be deemed to be an originating motion.
- 5.3 The initiation process requires that the following critical information be supplied:
 - 5.3.1 Nomination of the Case Manager appointed by the filing party;
 - 5.3.2 A short statement describing the subject matter of the claim. This information will subsequently appear in the case management section of the case page upon filing the Originating Process;
 - 5.3.3 The Certifications required by the Civil Procedure Act 2010; and
 - 5.3.4 Trial estimate. This will also appear in the case management section of the case page upon filing the Originating Process.
- 5.4 Upon the filing of the Originating Process and payment online of the prescribed fee, RedCrest will complete the following steps:
 - 5.4.1 Insert a new Supreme Court Electronic Civil proceeding case number for the Originating Process;
 - 5.4.2 Seal the Originating Process with the Court seal;
 - 5.4.3 Insert the date of filing;
 - 5.4.4 Open a new case page for the proceeding using information derived from the Originating Process;
 - 5.4.5 Assign a date for the first directions hearing (this may be changed if necessary by arrangement with the List Judge, once the case has been allocated);
 - 5.4.6 File the completed Originating Process in the new case page; and
 - 5.4.7 Display acknowledgement of filing. This will enable the filing party to access the new case page and print out the completed filed and sealed Originating Process and arrange for its service in the usual way in accordance with the Rules.
- 5.5 An Appearance to be filed in RedCrest is to be in the Form 8AB (for general use), Form 8AC (for a Conditional Appearance) and Form 4A (for Corporations matters).

- 5.6 A Third Party Notice filed in RedCrest must be filed Form 11C, under the RedCrest Rules. This form will permit the addition of new parties to the Schedule of Parties and to the case page.
- 5.7 All other documents are to be prepared in accordance with the Rules (with the heading for Commercial Court documents as in Schedule 1) and filed on RedCrest via the case page established for the relevant proceeding, following the instructions contained in the RedCrest How-To Guide.

6. ROLE OF CASE MANAGER

- 6.1 Each party to a proceeding is to appoint a Case Manager to manage that party's engagement with RedCrest. The person who files the Originating Process and the Notice of Appearance in each case, automatically becomes the Case Manager for the relevant party on behalf of whom the document is filed. There can be only one Case Manager for each party at any time.
- 6.2 The Case Manager appointed by a party has particular and important functions and responsibilities in relation to RedCrest, namely:
 - 6.2.1 Granting access to other registered persons to the relevant proceeding;
 - 6.2.2 The ability to remove access, for example, where a practitioner leaves a legal firm;
 - 6.2.3 Assigning the functions of Case Manager to another Case Manager if necessary;
 - 6.2.4 Keeping the Schedule of Parties up to date (if applicable); and
 - 6.2.5 It is the responsibility of the Case Manager to keep this information up to date at all times.
- 6.3 In the case of a self-represented party, the Prothonotary or a Deputy Prothonotary will act as the Case Manager.
- 6.4 It is the Case Manager's responsibility to ensure the correct users associated with a party to a case have access and that the accuracy of these details is maintained (for example, where a legal practitioner leaves a firm or where new counsel is briefed). Similarly, if a user who has access to a case leaves a firm or ceases working on a case, that user must advise the Case Manager so that the Case Manager can remove that user's access to any applicable RedCrest case(s). Where the departing legal practitioner is also the RedCrest Case Manager, that person must transfer the Case Manager status to a nominated person prior to departure. They must also notify the RedCrest Service Desk in writing of the change of Case Manager so that the outgoing Case Manager's system account can be deactivated.

7. ALLOCATION OF PROCEEDINGS

- 7.1 After initiation, the proceeding will be allocated to a Judge-managed List by the Commercial Court following a review of the features and characteristics of the proceeding. Following allocation of a proceeding to a Judge-managed List, the parties will be notified of the allocation by the Commercial Court Registry. If a party nominates a particular Judge-managed List at the time of initiation, this will either be confirmed or changed as a result of the allocation process.

8. URGENT APPLICATIONS

- 8.1 Applications of a genuinely urgent nature should be brought in accordance with the Commercial Court's urgent application procedure as set out in the 'Notice to the Profession - Updated Practice Court Procedures (Commercial Court)', which can be found on the Supreme Court's website.
- 8.2 New Commercial Court proceedings requiring urgent interlocutory relief may be initiated on RedCrest, particularly if interlocutory relief will form part of ongoing proceedings. However, practitioners must direct their enquiries about urgent listings, in the first instance, to Commercial Court Registry on (03) 9603 4105 and by email at commercialcourtturgents@superemecourt.vic.gov.au prior to initiating proceedings on RedCrest.
- 8.3 Where a proceeding is under Judge management, urgent applications may be sought by contacting the Associate to the List Judge and then informing the Commercial Court Registry of the allocated return date. If the Associate to the List Judge is unavailable, practitioners should contact the Commercial Court Registry on the above number.

9. SUMMONS FOR DIRECTIONS

- 9.1 The notice of a first directions hearing contained in an Originating Process filed in RedCrest is deemed to be a summons for directions in the proceeding.
- 9.2 On the filing of an Originating Process in RedCrest (Form 5F), the date of the first directions hearing will automatically appear on the Case page for the proceeding. The date set will be several weeks in advance, usually on a Friday.
- 9.3 On the Court's own motion or on application by a party to the proceeding, the date for the first directions hearing may be changed.

10. ORDER FOR ELECTRONIC SERVICE

- 10.1 Practitioners are directed to rule 28A.16 of the Rules. The Court may, on application by a party, order that the filing of documents in RedCrest between parties shall have effect as service of those documents on the parties to be served.

11. CONFIDENTIALITY STATUS OF DOCUMENTS

- 11.1 Upon filing, a document may be designated as 'Public' or 'Confidential'.
- 11.2 A document that is to be designated 'Confidential' upon filing is confidential as between the parties. In other words, confidential documents will be made available on RedCrest only to the Court and to practitioners and parties registered for that case. While a Confidential document will form part of the Court record, it will not be made accessible by file search to the public or persons who are not registered for the particular case.
- 11.3 The following documents will be designated Confidential upon filing into RedCrest:
 - 11.3.1 Exhibits to Affidavits;
 - 11.3.2 Outlines of Submissions;

- 11.3.3 Outlines of Argument;
 - 11.3.4 Lists of Authorities;
 - 11.3.5 Order 44 Reports (Expert Witness Statements);
 - 11.3.6 Witness Statements;
 - 11.3.7 Outlines of Evidence;
 - 11.3.8 Synopses of Evidence;
 - 11.3.9 Chronologies;
 - 11.3.10 Documents that by Court order are to be treated as confidential; and
 - 11.3.11 De Bene Esse evidence.
- 11.4 Rule 28A.17 of the Rules provides that the Court may make any order it thinks fit as to confidentiality and privacy in relation to the filing of documents on RedCrest. For example, the Court may:
- 11.4.1 Designate a particular document not referred to in paragraph 11.3 be treated as confidential;
 - 11.4.2 Direct that a particular document be filed in a redacted form; and/or
 - 11.4.3 Direct that a particular document be filed with an additional level of confidentiality (see further below).

12. COMMERCIAL IN CONFIDENCE MATERIAL

- 12.1 Practitioners who intend to file material that is Commercial-in-Confidence, and which is **not intended to be made available to other parties** or made available only on a restricted basis, require an order of the Court in advance of filing.
- 12.2 It is critical that a practitioner who anticipates filing material of this nature contacts the Commercial Court Registry or the Associate to the List Judge managing the case **before** filing to ensure that appropriate arrangements are in place for the treatment of that material.

13. FILING A DOCUMENT IN ERROR

- 13.1 If a document or part of a document is filed into RedCrest in error, on notification made to the Court by any means (including by telephone or email to the Associate to the List Judge or Associate Judge who has been assigned to the proceeding) and without prior notice to any other party, a Judge, Associate Judge or Judicial Registrar may direct that the document or part of the document be removed from the RedCrest file. A Judge's Associate, the Prothonotary, Deputy Prothonotary or a Registry officer may then be directed to remove the erroneous document, or part of the document from RedCrest.

14. OFFERS OF COMPROMISE

- 14.1 Offers of compromise must not be filed in RedCrest.

15. IMPEDIMENTS TO FILING

- 15.1 Access to RedCrest and/or filing of a document may be impeded in circumstances where:

- 15.1.1 There is a planned outage to RedCrest e.g: the Court may be required to take RedCrest offline temporarily for scheduled maintenance; or
- 15.1.2 There is an unplanned outage to RedCrest e.g: RedCrest may become unavailable due to an incident beyond the control of the Court (such as host server failure); or
- 15.1.3 A system error occurs during attempts by a practitioner to file or make a payment which results in an inability to successfully file a particular document and/or the unsuccessful processing of a specific payment.
- 15.2 A practitioner who is experiencing difficulties in filing a document or initiating proceedings on RedCrest within business hours should refer their inquiries in the first instance to the RedCrest Helpdesk within the Commercial Court Registry on (03) 9603 6042.
- 15.3 Where a practitioner is unable to file due to outage or system failure, they are referred to the Impediment Rule contained in Order 28A(8) of the RedCrest Rules which provides that if there is an impediment affecting the general access to RedCrest, the parties may file the document with the Prothonotary in any form the Prothonotary may allow (such as via email or by delivery of the document(s) on a USB stick).
- 15.4 Practitioners who wish to invoke the Impediment Rule should email the Commercial Court Registry at redcrest@supremecourt.vic.gov.au with electronic copies of the documents they intend to file, along with a description of the impediment. The email should refer to the time the outage, error or impediment occurred and be sent as soon as reasonably possible. This should be done regardless of any other means by which a practitioner may also deliver documents to the Prothonotary pursuant to the Impediment Rule.
- 15.5 Where there is an impediment in the form of an outage or a system error on RedCrest which prevents a time-critical document from being filed, and which may give rise to a limitation of actions issue or result in non-compliance with a Court order, and such outage or system error occurs outside of the business hours of the Commercial Court Registry or the RedCrest Service Desk, then:
 - 15.5.1 An application may be made to the Court to have the filing deemed to be successful, pursuant to the Impediment Rule.
 - 15.5.2 A practitioner requesting that the Impediment Rule be invoked in this way must provide evidence of the circumstances of the outage or system error at the time the outage or system error occurred, preferably in the form of screenshots of the incident.
 - 15.5.3 The Court may also require a sworn affidavit from the practitioner which outlines the circumstances in which the impediment to filing occurred, the time-critical nature of the impeded filing, and the reasons why the Impediment Rule is sought to be applied.
 - 15.5.4 Such an application may be granted upon the Court's satisfaction that an outage or system error occurred and that compliance with the relevant filing deadline was affected as a result.
- 15.6 The Impediment Rule **may not** be applied where the instructions contained in the How-to Guide are not followed, or where the legal practitioner themselves

or the legal practitioner's equipment was otherwise the cause of the error occurring.

- 15.7 In the case of any inconsistency between the investigations of the Court as to the cause of the impediment to filing and the assertions of the legal practitioner as to the cause of the impediment to filing, the Court shall inform the legal practitioner as to its findings, and invite submissions in response.

16. PERMITTED FILING FORMATS

- 16.1 All Court documents which are specifically prepared for a proceeding (eg. Pleadings, Witness Statements, Affidavits, Submissions and all Court documents as listed the RedCrest Document Naming Protocol which is available on the RedCrest webpage at www.redcrest.com.au) and which are filed on RedCrest must be in format which is able to be copied and edited such as 'Word' format.
- 16.2 Affidavit Exhibits, Court Books and Authorities may be filed on RedCrest in PDF format.

17. FILING EXHIBITS TO AFFIDAVITS

- 17.1 Exhibits to Affidavits must be paginated and, where possible, shall be contained in a single file for upload, named in accordance with the RedCrest Document Naming Protocol (eg. 'Exhibits 1-5 to the Affidavit of [name] sworn/affirmed on [date] filed on behalf of [party]').
- 17.2 Where the exhibits to an affidavit exceed two in number, an index is to be provided which is hyperlinked to the first page of each exhibit.

18. REMOVAL OF HIDDEN VERSION HISTORIES

- 18.1 All documents filed into RedCrest must have 'track changes' and any other review functions and version histories removed. The onus is on filing practitioners and filing parties to ensure that this is done.

19. ACCESS BY PARTIES INCLUDING SELF-REPRESENTED LITIGANTS

- 19.1 Only a legal practitioner or an employee of a legal practice with administrative responsibility for the relevant RedCrest matter will be able to apply for a username and password online.
- 19.2 A self-represented party seeking access to RedCrest to view a case page for a matter in which they are involved, should make the request by email to unrepresented@supremecourt.vic.gov.au.
- 19.3 A Court officer will review and determine any request by a self-represented party for access, taking into account the party's reasons for the request and the party's capacity to comply with the Court Rules and the User Instructions.
- 19.4 A self-represented party (unless otherwise ordered by the Court), who is granted access and issued a username and password will:

- 19.4.1 have full access to view each case for which the party is registered (including public and confidential documents).
- 19.4.2 **not** be able to file any documents via RedCrest. Instead, they may seek to file documents by email to unrepresented@supremecourt.vic.gov.au. Once the documents have been checked and approved for filing, Registry staff can assist in the filing process.
- 19.5 A self-represented party who is served with an Originating Process, a Third Party Notice or a Counterclaim (as a new party) and who wishes to contest the claim must:
 - 19.5.1 Complete a Notice of Appearance Form 8AB (General), 8AC (Conditional) or 4A (Corporations); and
 - 19.5.2 Within the time stated in the Originating Process, file their Notice of Appearance by email to unrepresented@supremecourt.vic.gov.au.
- 19.6 Assistance will be given by Registry staff to ensure that the Notice of Appearance is correctly completed. Registry staff will then file the Notice of Appearance in the electronic file in RedCrest for the proceeding.

20. FILE INSPECTIONS IN REDCREST MATTERS

- 20.1 Any person wishing to conduct a file inspection of a RedCrest matter must contact the Commercial Court Registry by telephone or email to arrange an inspection prior to attending the Commercial Court Registry.

21. CITEC

- 21.1 Matters to which RedCrest applies will not be permitted to be filed via the Citec efilg system under Order 28A of the Rules.

22. GROUP PROCEEDINGS

- 22.1 A practitioner seeking to initiate a Group Proceeding on RedCrest pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) **should not do so** without prior consultation with the Commercial Court Registry, and may be required to seek the permission of the Court.

23. REDCREST USAGE RULES

- 23.1 As a condition of being issued with a username and password for RedCrest and of continuing to use RedCrest, each registrant must read and agree to the following terms and conditions of RedCrest use:
 - 23.1.1 To protect and maintain the confidentiality of any parts of a Court file in RedCrest designated as confidential;
 - 23.1.2 To keep confidential the username and password used for access to RedCrest for the exclusive use of the registrant and any person who is a personal assistant of the registrant;
 - 23.1.3 To comply with any condition or limitation of registration issued in relation to RedCrest;

- 23.1.4 To comply with the RedCrest Rules and this RedCrest Practice Note; and
23.1.5 To pay the fees prescribed by Supreme Court (Fees) Regulations 2012 which are the payable in respect of the RedCrest matter. See also Practice Note SC CC 7 – Imposition of Fees in Commercial Court Judge-managed Lists.
- 23.2 Under the RedCrest Rules the Prothonotary may refuse to issue a username to a person or may cancel the username of a person if the person, amongst other things, fails to comply with these terms and conditions.

24. PAYMENT METHODS

- 24.1 Payments of prescribed Court fees may be undertaken online using AMEX, Visa or Mastercard. Until further notice, no other online payment method will be accepted.

25. JUDICIAL ELECTRONIC SIGNATURE FOR JUDGMENTS AND ORDERS

- 25.1 For the purposes of the authentication of judgments and orders in RedCrest pursuant to Rule 28A.11 of the RedCrest Rules, the electronic signature of a Judge, Associate Judge, Judicial Registrar or the Deputy Prothonotary may be the name of the Judge, Associate Judge, Judicial Registrar or the Deputy Prothonotary electronically printed in any font.

26. PRACTITIONER ELECTRONIC SIGNATURE

- 26.1 For the purposes of signature on RedCrest forms, including Civil Procedure Act Certifications, or any electronic document required to be signed pursuant to Rule 28A.08 of the RedCrest Rules, an electronic signature must be used. The electronic signature of a practitioner may be that practitioner's full name, preceded by 's/'.

AMENDMENT HISTORY

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Note No 3 of 2014

Vivienne Macgillivray
Executive Associate to the Chief Justice
30 January 2017

SCHEDULE 1

HEADING TO PROCEEDINGS IN THE COMMERCIAL COURT

[Non-Corporations Proceeding]

IN THE SUPREME COURT OF VICTORIA

AT MELBOURNE

COMMERCIAL COURT

LIST: [*insert List as appropriate, e.g. Commercial List
TEC List or Intellectual Property List*]

S ECI ##### [*to be inserted by the Court*]

BETWEEN:

#

Plaintiff

- and -

#

Defendant

[Corporations Proceeding]

IN THE SUPREME COURT OF VICTORIA

AT MELBOURNE

COMMERCIAL COURT

CORPORATIONS LIST

S ECI ##### [*to be inserted by the Court*]

IN THE MATTER OF XY Pty Ltd (ACN 111 111 111)

BETWEEN:

#

Plaintiff
f

- and -

#

Defendant
t