



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 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 RedCrest Corporations List (which excludes Associate Judge-managed proceedings);
 - 1.3.4 Intellectual Property List;
 - 1.3.5 Insurance List;
 - 1.3.6 Admiralty List;
 - 1.3.7 Arbitration List; and
 - 1.3.8 Taxation List.
- 1.4 This Practice Note is to be read in conjunction with Order 28A of the *Supreme Court (General Civil Procedure) Rules 2015*, 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 Commercial Court Registry 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 Commercial Court Registry at redcrest@supcourt.vic.gov.au or on 03 9603 6042.

2. COMMENCEMENT

2.1 This Practice Note was reissued on 21 December 2017, commences on 2 January 2018 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 Commercial Court Registry and available for download from the RedCrest Homepage at www.redcrest.com.au).

List Judge means a Commercial Court Judge who manages a List referred to in paragraph 1.3.

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

RedCrest Rules means 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 in 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 intended to be entered in the Commercial Court, upon commencement, the Originating Process must specify the particular List in which it is intended that the proceeding be managed (e.g: 'Commercial List' for general commercial matters; 'TEC List' for Technology, Engineering and Construction matters; 'Intellectual Property List'; 'Insurance List'; 'Admiralty List', 'Arbitration List'; or 'Taxation List').

4.4 Form 2A must be used for Corporations matters intended to be Judge-managed, which will include in the heading the list identifier 'RedCrest 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 in RedCrest may be initiated using the 'ORIGINATING PROCESS [REDCREST]' form as prescribed by the Rules. Form 5F is for general usage and Form 2A is used for Judge-managed Corporations matters. Proceedings may also be initiated using other forms prescribed by the Rules (e.g Forms 5A - 5D).
- 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 following information should be supplied at the time of filing the Originating Process:
- 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 should be inserted in the 'Filing Note' field in RedCrest upon filing the Originating Process;
 - 5.3.3 The Certifications required by the *Civil Procedure Act 2010*;
 - 5.3.4 Trial estimate. This should also be inserted in the 'Filing Note' field in RedCrest upon filing the Originating Process; and
 - 5.3.5 Any other information relevant to the matter, including whether the matter is urgent or is related to other proceedings in the Court, should be inserted in the 'Filing Note' field in RedCrest upon filing the Originating Process.
- 5.4 Upon the filing of the Originating Process, payment of the prescribed fee and confirmation of the filing by the Commercial Court Registry, 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 Include the completed Originating Process in the new case page; and
 - 5.4.6 Generate an email notification confirming the 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 in the Form 11C, under the RedCrest Rules.

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 in RedCrest, 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 is nominated as the Case Manager in the Originating Process, Notice of Appearance or Notice of Change of Solicitor 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 must register with RedCrest before the Originating Process, Notice of Appearance or Notice of Change of Solicitor is filed on behalf of a party.

6.3 The Case Manager appointed by a party has particular and important responsibilities in relation to RedCrest, namely:

6.3.1 Informing the Commercial Court Registry of registered users whose request for access to a case page should be approved. Requests for access must be emailed to the Commercial Court Registry at redcrest@supcourt.vic.gov.au;

6.3.2 Informing the Commercial Court Registry when a registered user should no longer have access to a case page, for example, where a practitioner leaves a legal firm;

6.3.3 Assigning the responsibilities of Case Manager to another Case Manager if necessary; and

6.3.4 Receiving all notifications of the filing of documents, including filings by other parties, and bringing those notifications to the attention of any other relevant users with access to the case page.

6.4 In the case of a self-represented party, the Prothonotary, Deputy Prothonotary or the Self-Represented Litigant Co-ordinator will act as the Case Manager.

6.5 It is the Case Manager's responsibility to ensure the correct users associated with a party to a case have access to the case page 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 page leaves a firm or ceases working on a case, that user must advise the Case Manager so that the Case Manager can request the Commercial Court Registry to remove that user's access to any applicable RedCrest case page(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 Commercial Court Registry in writing of the change of Case Manager so that the outgoing Case Manager's system account can be deactivated.

7. ALLOCATION OF PROCEEDINGS AND FIRST DIRECTIONS

- 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 Commercial Court Registry will notify the parties of the allocation to a Judge-managed List and of a date for the first directions hearing. 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@supcourt.vic.gov.au prior to initiating proceedings on RedCrest. Upon filing of the Originating Process in RedCrest, the urgent nature of the matter may be noted in the 'Filing Note' field in 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. CONFIDENTIALITY STATUS OF DOCUMENTS

- 9.1 The following documents will be designated Confidential upon filing in RedCrest:
- 9.1.1 Exhibits to Affidavits;
 - 9.1.2 Outlines of Submissions;
 - 9.1.3 Outlines of Argument;
 - 9.1.4 Lists of Authorities;
 - 9.1.5 Order 44 Reports (Expert Witness Statements);
 - 9.1.6 Witness Statements;
 - 9.1.7 Outlines of Evidence;
 - 9.1.8 Synopses of Evidence;
 - 9.1.9 Chronologies;
 - 9.1.10 Documents that by Court order are to be treated as confidential; and
 - 9.1.11 De Bene Esse evidence or evidence by deposition.
- 9.2 Confidential documents will be made available on RedCrest only to the Court and to registered users with access to the case page 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 do not have access to the particular case page.

9.3 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:

9.3.1 Designate a particular document not referred to in paragraph 9.1 be treated as confidential;

9.3.2 Direct that a particular document be filed in a redacted form; and/or

9.3.3 Direct that a particular document be filed with an additional level of confidentiality (see further below).

10. COMMERCIAL IN CONFIDENCE MATERIAL

10.1 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.

10.2 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.

11. FILING A DOCUMENT IN ERROR

11.1 If a document or part of a document is filed in 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 case page. 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.

12. OFFERS OF COMPROMISE

12.1 Offers of compromise must not be filed in RedCrest.

13. IMPEDIMENTS TO FILING

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

13.1.1 There is a planned outage to RedCrest e.g: the Court may be required to take RedCrest offline temporarily for scheduled maintenance; or

13.1.2 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

- 13.1.3 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.
- 13.2 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 Commercial Court Registry on (03) 9603 6042.
- 13.3 Where practitioners are unable to file due to outage or system failure, they are referred to the impediment rule contained in rule 28A.04(8) of the RedCrest Rules, which provides that, if there is an impediment affecting RedCrest itself or general access to RedCrest, the parties may file the document(s) with the Prothonotary in any form the Prothonotary may allow.
- 13.4 For the purpose of the impediment rule in rule 28A.04(8), practitioners are informed that the Prothonotary has issued a notice that, where a document cannot be filed in RedCrest in a proceeding because of an impediment affecting RedCrest itself or affecting general access to RedCrest:
- 13.4.1 the Prothonotary allows documents to be filed by being lodged with the Prothonotary via email to the Commercial Court Registry at redcrest@supcourt.vic.gov.au; and
- 13.4.2 any such email must attach the document or documents, and should briefly describe the impediment and state the relevant time the impediment occurred.

14. PERMITTED FILING FORMATS

- 14.1 All documents filed in RedCrest must be in PDF format.
- 14.2 It is preferable that 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) are filed in **text searchable** PDF format.

15. FILING EXHIBITS TO AFFIDAVITS

- 15.1 Exhibits to Affidavits must be filed as a separate document to the Affidavit.
- 15.2 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]').
- 15.3 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.

16. ACCESS BY PARTIES INCLUDING SELF-REPRESENTED LITIGANTS

- 16.1 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.

- 16.2 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.
- 16.3 A self-represented party will 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.
- 16.4 A self-represented party who is served with an Originating Process, a Third Party Notice or a Counterclaim (as a new party) in a RedCrest proceeding and who wishes to contest the claim must:
- 16.4.1 Complete a Notice of Appearance Form 8AB (General), 8AC (Conditional) or 4A (Corporations); and
- 16.4.2 Within the required time, file a Notice of Appearance in person at the Commercial Court Registry or by email to unrepresented@supremecourt.vic.gov.au.
- 16.5 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.

17. FILE INSPECTIONS IN REDCREST MATTERS

- 17.1 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.

18. CITEC

- 18.1 Subject to rule 28A.04(6) to (9) of the RedCrest Rules, matters to which RedCrest applies will not be permitted to be filed via the CITEC e filing system under Order 28A of the Rules.

19. GROUP PROCEEDINGS

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

20. REDCREST USAGE RULES

- 20.1 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:
- 20.1.1 To protect and maintain the confidentiality of any parts of a Court file in RedCrest designated as confidential;

- 20.1.2 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;
 - 20.1.3 To comply with any condition or limitation of registration issued in relation to RedCrest;
 - 20.1.4 To comply with the RedCrest Rules and this RedCrest Practice Note; and
 - 20.1.5 To pay the fees prescribed by *Supreme Court (Fees) Regulations 2012* which are payable in respect of the RedCrest matter. See also Practice Note SC CC 7 - Imposition of Fees in Commercial Court Judge-managed Lists.
- 20.2 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.

21. PAYMENT METHODS

- 21.1 Payments of prescribed Court fees may be made online using PayPal. Users with a PayPal account may pay by any linked account, including AMEX, Visa or Mastercard. Users paying via the PayPal guest checkout function may pay with Visa or MasterCard only. Until further notice, no other online payment method will be accepted.

22. JUDICIAL ELECTRONIC SIGNATURE FOR JUDGMENTS AND ORDERS

- 22.1 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.

23. PRACTITIONER ELECTRONIC SIGNATURE

- 23.1 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

21 December 2017: This Practice Note was reissued on 21 December 2017 with effect from 2 January 2018 and replaced former Practice Note SC CC 5 which was issued on 12 April 2017

12 April 2017: This Practice Note was reissued on 12 April 2017 with effect from 18 April 2017 and replaced former Practice Note SC CC 5 which was issued on 30 January 2017

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
21 December 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, Intellectual Property List, Insurance List,
Admiralty List, Arbitration List or Taxation List*]

BETWEEN:

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Plaintiff

- and -

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Defendant

[Corporations Proceeding]

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
REDCREST CORPORATIONS LIST

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

BETWEEN:

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Plaintiff

- and -

#

Defendant