

QCAT Practice Direction No 9 of 2010

Directions for decisions by default- unliquidated damages

1. This Practice Direction applies if:
 - (a) a person (the applicant)¹ has applied to the tribunal to recover unliquidated damages² from another person (the respondent); and
 - (b) an enabling Act, or the QCAT Act or Rules³, state that the respondent must respond to the application within a stated period; and
 - (c) the respondent has not responded within the required period.
2. The applicant may request a decision on the papers (*a decision by default-unliquidated damages*) by undertaking the following procedure:
 - (a) the applicant files a request for decision by default – unliquidated damages in Form 50;
 - (b) the applicant files an affidavit proving service of the original application upon the respondent; and
 - (c) the applicant files a further affidavit or affidavits in support of the request for the decision by default – unliquidated damages, setting out the basis upon which the claim has been calculated, and annexing all supporting materials; and, if costs or interest are also claimed, information and material supporting those claims⁴.
3. Upon receipt of that material the tribunal will determine the application on the papers and advise the applicant of its decision.
4. The decision is taken to be the final decision of the tribunal in the proceeding.

Justice Alan Wilson
President

25 June 2010

¹ 'applicant', for the purposes of this Practice Direction, may include a party who has brought a counter-application – see QCAT rule 48.

² **Unliquidated damages** arise when a claim is made for a sum which cannot be determined without consideration, by the Tribunal, of the applicant's evidence in support of the claim – for example, a claim in which the precise amount which should be awarded cannot be determined from the terms of a prior agreement between the parties, or some other standard; and must be calculated by reference to invoices, quotations or the like.

³ *Queensland Civil and Administrative Act 2009; Queensland Civil and Administrative Tribunal Rules 2009.*

⁴ As to costs see the QCAT Act s 50(2) and QCAT Rule 64.