

Form Number 50 (version 3)

Queensland Civil and Administrative Tribunal Act 2009 (section 50A)

Request for decision by default – unliquidated damages

Refer to the attached instructions prior to filling out this form.

This form must be filed at the registry where your application was filed.

For office use only

Case number:	
Date filed:	
Registry:	
Fee paid:	
Receipt number:	

PART A APPLICANT'S AND RESPONDENT'S DETAILS

Applicant

Respondent

PART A MATTER DETAILS

Case number

Registry

APPLICATION CHECKLIST

I want the tribunal to make a decision in default of the respondent filing a response to my application for payment of a debt or liquidated demand of money.

CHECKLIST

- I have completed all parts to this form
- I have completed and signed every page of Part B (or I have already filed a *Form 9 - Affidavit of service*)
- I have completed and signed Part C including the final page
- I have attached supporting documents where required
- I am ready to proceed with this application

DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

1. I want the tribunal to make a decision in default of the respondent filing a response to my application for

(State the orders you are seeking from the Tribunal)

2. I want the tribunal to assess the quantum of damages payable to me by the respondent, and:

- the fee paid for the application;
- legal costs based on a scale stated in the rules;
- interest - refer to page 5 of this application.

PART B AFFIDAVIT OF SERVICE

PLEASE TICK THE APPLICABLE BOX

Note: If you (or another person) have already filed a Form 9 - Affidavit of service then you do not need to complete Part B.

- A Form 9 - Affidavit of service has been filed (proceed to Part C) **OR**
- I rely on the affidavit of service as per Part B of this form (please complete parts B and C).

PLEASE COMPLETE ALL DETAILS

I,

(insert full name of person making affidavit)

of

	Postcode

state on oath / solemnly and sincerely affirm and declare:

On the / / 20 at am / pm,

I served

(insert name of person or entity/s served)

a copy of

(insert name of document/s)

filed on / / 20 at the Queensland Civil and Administrative Tribunal

(insert tribunal address)

AS FOLLOWS:

(complete service details in the relevant parts below - sections B1, B2, B3, B4 and B5 as applicable)

Person making affidavit to sign

Person taking the affidavit to sign (qualified witness)

PART B1 PERSONAL SERVICE

1. I delivered the copy to him her them

personally at *(insert address)*

	Postcode	

2. I identified the person served by

(insert means of identification)

PART B2 SERVICE OF A COMPANY

I left the copy at the company's registered office, namely

	Postcode	

I posted the copy to the company's registered office, namely

	Postcode	

I served the copy otherwise in accordance with section 109X of the *Corporations Act 2001* (Commonwealth), namely

(insert method of service)

PART B3 OTHER SERVICE

I posted the copy to the address included in the entity's address for service, namely

	Postcode	

I faxed the copy to the fax number () that was included in the entity's address for service.

I emailed the copy to the email address that was included in the entity's address for service.

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(insert email address)

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Person making affidavit to sign

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Person taking the affidavit to sign (qualified witness)

PART B3 OTHER SERVICE *(continued)*

I electronically transmitted the copy to the non-fax or email electronic address that was included in the entity's address for service. *(e.g. via a website)*

(insert electronic address)

I left the copy with a person *(insert name)*

who is apparently an adult and apparently residing or employed at the entity's address for service, namely *(insert address)*

<input type="text"/>		
<input type="text"/>	Postcode	<input type="text"/>

I left the copy with a person *(insert name)*

who is apparently an adult and apparently residing or employed at the address in accordance with the service practice direction at which documents may be left with a person in circumstances where the entity does not have an address for service, namely *(insert address)*

<input type="text"/>		
<input type="text"/>	Postcode	<input type="text"/>

I served the copy in another way in accordance with the service practice direction, namely

(insert method of service)

I served the copy in accordance with the tribunal's direction, namely by

(insert method of service)

I otherwise served the copy in accordance with an Act namely by *(insert name of Act)*

(insert method of service)

PART B4 DOCUMENT SERVED

Please tick one of the following options:

I have attached to this affidavit a copy of the document served, or

I have already filed the document which is named above in Part B.

Person making affidavit to sign

Person taking the affidavit to sign (qualified witness)

PART B5 INTERSTATE SERVICE

You must complete this part if you served the document interstate. Please tick the applicable box:

- I did attach the notice under the *Service and Execution of Process Act 1992* (Commonwealth) to the document.
- I did not attach the notice under the *Service and Execution of Process Act 1992* (Commonwealth) to the document.

PART C AFFIDAVIT FOR CLAIM OF UNLIQUIDATED DAMAGES

If there is insufficient space here please attach additional pages

I,
(insert full name of person making affidavit)

of
(insert residential or business address, or place of employment)

<input type="text"/>	Postcode	<input type="text"/>
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state on oath / solemnly and sincerely affirm and declare:

- I have not received a response to the application from the respondent.
- The respondent: (please tick the appropriate box)

- has paid \$ _____ in part satisfaction of my claim.
- has not paid any amount in full or part satisfaction of my claim.

3. Set out the facts you are relying on and your reasons for making this application. Provide details of the amount you are seeking, how you have calculated that amount, how the claim came to be owing to you.

(You must provide supporting documentation and may refer to the practice direction on decisions by default for unliquidated damages which is available on the QCAT website www.qcat.qld.gov.au. Please note that if you have already provided this documentation with your application form you do not need to attach it again).

Interest

The tribunal may order interest be paid at the rate the tribunal considers appropriate until the date the matter is determined. If you are claiming interest please outline your calculations below, including the rate of interest (if an agreed amount please provide evidence of the agreement) and the date the interest became payable.

Please use numbered paragraphs:

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Person making affidavit to sign

Person taking the affidavit to sign (qualified witness)

Instructions for completing

Request for decision by default – unliquidated damages

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.

When can you make a request for a decision by default for unliquidated damages?

- Generally respondents will have 28 days to reply to an application. However, there are prescribed applications for which the respondent has 14 days to respond (for more information see the *Queensland Civil and Administrative Tribunal Rules 2009*). The prescribed applications are:
 - (a) for a building dispute under the *Queensland Building and Construction Commission Act 1991* or
 - (b) for the recovery of a debt under the *Queensland Building and Construction Commission Act 1991* or
 - (c) certain applications made under the *Domestic Building Contracts Act 2000*
 - (d) certain applications made under the *Body Corporate and Community Management Act 1997*
- You cannot get a decision by default if your application, or any part thereof, is for:
 - (a) a declaration that a term of a contract is of no effect
 - (b) avoidance of a policy of insurance under the statutory insurance scheme, or
 - (c) an order for rectification or completion of defective or incomplete work.

To apply for a decision by default you must provide affidavit evidence that the application has been served on the respondent, that they have not responded to the application within the time frame allowed and the details of the amount claimed in default (please also refer to the practice direction on decisions by default for unliquidated damages which is available on the QCAT website www.qcat.qld.gov.au).

Important note: Do not use this form if you are applying for an electronic decision by default or making a claim in relation to a minor civil dispute or a claim in relation to a debt.

PART B AFFIDAVIT OF SERVICE

Please complete details of service of the application. You must complete all relevant sections of Part B and sign every page in the presence of a qualified witness.

Please note: Part B must be completed by the person who served the application on the respondent. If another person served the respondent then they must complete a *Form 9 - Affidavit of Service*. If you have already filed a *Form 9 - Affidavit of Service* proving service of the application then you do not need to complete Part B.

- Refer to the *Queensland Civil and Administrative Tribunal Rules 2009* and the Queensland Civil and Administrative Tribunal practice directions for service requirements.
- Insert your full name and residential or business address or place of employment.
- If the entity served is not an individual then you must use the correct name, for example:

Instructions for completing (continued)

- a company name, including the company's ABN or ACN. You must attach a copy of the ASIC Company Extract showing the company's registered office.
- a business name regardless of whether it is registered. Where the business has an ABN you must include this number. You must also attach a copy of the ASIC Business Name Extract showing the business' registered office.
- a State agency name, for example a Queensland Government department.
- If the respondent is a company you must attach copy of an ASIC search showing the company name, ACN or ABN and the address for service.

PART C AFFIDAVIT FOR CLAIM OF UNLIQUIDATED DAMAGES

Please provide details for the basis of your claim for unliquidated damages by showing how the amount is calculated, and any calculations for interest or costs if sought. You will also need to attach any supporting material. You must sign every page.

Please refer to the practice direction on decisions by default for unliquidated damages which is available on the QCAT website www.qcat.qld.gov.au before completing this request for decision by default.

Interest

- You can claim interest at a rate specified under the contract or agreed between you and the respondent. You will need to prove that agreement.
- If the rate was in a contract, you will need to attach a copy, or evidence of that agreement to your application (if you haven't already filed it).
- If a rate has not been agreed or provided in the agreement, you can ask for interest at the rate prescribed by practice direction. You may also refer to the interest calculator available at www.courts.qld.gov.au

SIGNATURE

Each page of Part B (if completed) and Part C must be signed.

Please sign in the presence of a qualified witness who is authorised by the *Oaths Act 1867* to take an affidavit:

- (a) a justice of the peace, commissioner for declarations or notary public under the law of Queensland, the Commonwealth or another State,
- (b) a lawyer,
- (c) a conveyancer, or another person authorised to administer an oath, under the law of the state, the Commonwealth or another state,
- (d) if the affidavit is taken outside Australia — a person authorised to administer an oath under the law of the place in which the affidavit is taken.

REQUESTS MUST BE FILED

You must file the request at the same Magistrates Court or QCAT registry at which you filed the original application. No extra copies of the request and attachments are needed. However you should keep a copy for yourself.

WARNING

Section 216 of the *Queensland Civil and Administrative Tribunal Act 2009* makes it an offence for a person to knowingly give the registry documents containing false or misleading information. Maximum penalty for such an offence – 100 penalty units.

YOUR INFORMATION

QCAT collects your contact details for the purposes of compliance with the *Queensland Civil and Administrative Tribunal Act 2009* in relation to proceedings in QCAT. QCAT may contact you to seek your assistance in research to assist in the evaluation of the operation of QCAT. You are not obliged to participate in feedback or surveys. If you do participate no identifying particulars will be published. QCAT will not disclose your contact details or any other personal information to a third party unless required by law.