

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.

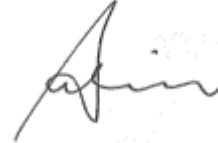
¹ 'applicant', for the purposes of this Practice Direction, may include a party who has brought a counter-application – see QCAT rule 48.

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.

4. The decision is taken to be the final decision of the tribunal in the proceeding.

A handwritten signature in black ink, appearing to read 'Alan Wilson', is centered on the page. The signature is written in a cursive, flowing style.

*Justice Alan Wilson
President*

25 June 2010