

## 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)<sup>1</sup> has applied to the tribunal to recover unliquidated damages<sup>2</sup> from another person (the respondent); and
  - (b) an enabling Act, or the QCAT Act or Rules<sup>3</sup>, 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 claims<sup>4</sup>.
3. Upon receipt of that material the tribunal will determine the application on the papers and advise the applicant of its decision.

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

<sup>2</sup> **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.

<sup>3</sup> *Queensland Civil and Administrative Act 2009; Queensland Civil and Administrative Tribunal Rules 2009.*

<sup>4</sup> 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 style with a large initial 'A'.

*Justice Alan Wilson  
President*

*25 June 2010*