

# Premium Income Fund

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## Litigation update

Justice Gordon of the Federal Court has handed down her decision today in the proceedings brought by the PIF Action Group Incorporated and Mark Robert Hodges and Charles Robert Hodges as custodian for the PIF Action Group Incorporated.

The consequence of the decision is that the 75.5 million units issued on 17 May 2011 by way of placement remain on issue and enjoy all of the usual rights attaching to units in the Premium Income Fund, including the right to vote.

The rights issue however, will not be able to proceed, and units will not be issued to those Unitholders who applied. All money will be returned to those Unitholders who subscribed next week.

Justice Gordon noted there were two separate bundles of units, those units issued the subject of the placement and those units proposed to be issued under the rights issue. She said:

*'in my view, relief of the kind sought by the Plaintiff should now not be granted in relation to the units that have been issued and allotted as a result of the placement.*

*Leaving aside there is no separate representation of any of the holders of those newly issued units, the fact that the rights of third parties have now been intervened, is reason enough to require the conclusion that the relief of the kind now sought by the Plaintiff should not be granted.*

...

*That conclusion is fortified by the fact that the Plaintiffs were aware of Wellington's intention to make the placement as early as 6 May 2011 (before any issue or allotment of the units) but did not institute proceedings in this court until 6 June 2011.*

*If, as here, the plaintiff sought relief other than damages, they should have moved earlier.'*

The Court made the following orders:

- in relation to the rights issue, a declaration that the modification of the Scheme Constitution which the first, third and fourth defendants purported to make by deed poll dated 9 May 2011 was and is contrary to section 601GC of the *Corporations Act 2001*;
- in relation to the rights issue, a declaration that the modification of the Constitution which the first, third and fourth defendants purported to make by deed poll dated 6 May 2011 was and is contrary to section 601GC(1)(b) of the *Corporations Act*;
- an order restraining the defendants and each of them, whether by themselves, their servants and agents or howsoever otherwise, from allotting or issuing to any person any unit in PIF pursuant to the rights issue;
- the defendants pay the plaintiff's costs of the proceeding, such costs to be taxed in default of agreement.

## For further information please contact:

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