

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Interlocutory Application - Form 35 - Rule 17.01(1)(a)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	2/10/2026 2:31:35 PM AEST
Date Accepted for Filing:	5/10/2026 3:23:54 PM AEDT
File Number:	VID552/2026
File Title:	THE COMMONWEALTH OF AUSTRALIA v 3M COMPANY (DELAWARE COMPANY NUMBER 262413) & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



INTERLOCUTORY APPLICATION

No. VID552/2026

Federal Court of Australia
District Registry: Victoria
Division: General

THE COMMONWEALTH OF AUSTRALIA

Applicant

3M COMPANY (DELAWARE COMPANY NUMBER 262413) and another named in Schedule 1

Respondents

To: the Applicant

The Respondents apply for the interlocutory orders set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

Time and date for hearing: [Registry will insert time and date]

Place: [address of Court]

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable]

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)	The Respondents - 3M Company (Delaware Company Number 262413) and 3M Australia Pty Ltd (ACN 000 100 096)
Prepared by (name of person/lawyer)	Aoife Mary Xuereb
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Interlocutory orders sought

1. Pursuant to rule 30.01 of the *Federal Court Rules 2011* (Cth) (**Rules**), the following questions are to be determined separately from any other questions in the proceeding:
 - (a) On the facts set out in the Commonwealth's statement of claim,¹ is section 39(1) of the *Environment Protection Act 2017* (Vic) (**EP Act**) invalid in its application to the Commonwealth because it infringes the principle, implied from the text and structure of the Constitution, that a State government may not curtail the Commonwealth's capacity to function as a government?
 - (b) On the facts set out in the Commonwealth's statement of claim, is section 39(1) of the EP Act invalid in its application to the Commonwealth, pursuant to section 109 of the Constitution, by reason of inconsistency with:
 - (i) sections 3, 6, 7 and 14(1) of the *National Environment Protection Council Act 1994* (Cth), section 9(1) of the *National Environment Protection Measures (Implementation) Act 1998* (Cth) and the *National Environment Protection (Assessment of Site Contamination) Measure*; and/or
 - (ii) section 8(1)(d) of the *Air Services Act 1995* (Cth),
 to the extent of any inconsistency?
 - (c) On the facts set out in the Commonwealth's statement of claim and the facts set out in Schedule 2, which are the subject of the Respondents' Notice to Admit dated 2 October 2026, is the EP Act inoperative within the geographical areas of the Commonwealth defence bases, by reason of s 52(i) of the Constitution?
2. Alternatively to Order 1, pursuant to rule 16.21(1)(e) of the Rules, paragraphs [184] to [191], [214(e)] and [214(f)] of the Commonwealth's statement of claim filed on 28 May 2026 be struck out.
3. The Commonwealth pay the Respondents' costs of this interlocutory application.
4. Any other order that the Court deems appropriate.

¹ See *Yunupingu v Commonwealth* (2023) 298 FCR 160, [13]-[19].



Service on the Applicant

It is intended to serve this application on the Applicant.

Date: 2 October 2026

A handwritten signature in blue ink, appearing to read "Aoife Xuereb", is written over a horizontal dotted line.

Signed by Aoife Mary Xuereb
Lawyer for the Respondents

**SCHEDULE 1**

No. VID552/2026

Federal Court of Australia
District Registry: Victoria
Division: General

Second Respondent

3M AUSTRALIA PTY LTD (ACN 000 100 096)



SCHEDULE 2

1. At all times since 1 July 2021, the Commonwealth has been the registered and sole proprietor of the estate in fee simple for each of the titles comprising the Bandiana Base.
2. At all times since 1 July 2021, the Commonwealth has been the registered and sole proprietor of the estate in fee simple for each of the titles comprising the Cerberus Base.
3. At all times since 1 July 2021, the Commonwealth has been the registered and sole proprietor of the estate in fee simple for each of the titles comprising the East Sale Base.
4. At all times since 1 July 2021, the Commonwealth has been the registered and sole proprietor of the estate in fee simple for each of the titles comprising the Williams Base.