Appeals to the UK Privy Council

In 1986 the *Australia Acts* were introduced in all of the States, the Federal Parliament and in UK Parliament *"to bring constitutional arrangements affecting the Commonwealth and the States to be brought into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation". **Section 11*** provides:

> *"...no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of the Parliament of the United Kingdom, the Royal Prerogative or otherwise, from or in respect of any decision of an Australian court."*

The purpose of this provision was to abolish appeals to the Privy Council from the State courts. While Chapter III of the *Constitution* established the High Court as the final court of appeal for Australia, the problem was that State courts could bypass the High Court in appeals and go straight to the Privy Council in the UK, causing complications in Australia's court system, since the High Court still had to answer to the UK privy council.

The ***High Court website*** states:

> "*Appeals to the Privy Council from decisions of the High Court were effectively ended by the combined effects of the Privy Council (Limitation of Appeals) Act 1968 and the Privy Council (Appeals from the High Court) Act 1975. However, a right of appeal to the Privy Council remained from State courts, in matters governed by State law, until the passage of the Australia Acts, both State and Federal, in the 1980s."*

Until the passing of the *Privy Council (Limitation of Appeals) Act 1968* and the *Privy Council (Appeals from the High Court) Act 1975* it was possible for some appeals from decisions of the High Court to be taken under section 74 of the *Constitution*, which provides:

> *"Appeal to Queen in Council - No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council. The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave. Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure."*

The purpose of this provision was to limit appeals from the High Court to the Privy Council. Appeals were theoretically possible for section 74 inter se cases, which involves a dispute between the federal Government and one or more of the States, but in order for any such appeal to happen the High Court would need to provide a certificate.

Colonial Sugar Refining Co Ltd v Attorney-General for the Commonwealth [1912] HCA 94 is the only case in which the High Court issued a certificate under section 74 of the *Constitution* to permit an appeal to the Privy Council on a constitutional question. In ***Attorney-General (Cth) v Colonial Sugar Refining Company Limited [1913] UKPCHCA 4***, the Privy Council did not answer the question asked by the High Court, and the court never issued another certificate of appeal. In 1918 ***Prime Minister Hughes*** described the decision of the Privy Council as one *"which must have caused great embarrassment and confusion, if it were not for the fortunate fact that the reasons for the Judicial Committee's decision are stated in such a way that no court and no counsel in Australia has yet been able to find out what they were".* In ***Whitehouse v Queensland [1961] HCA 55*** the court said (at 6):

> *"...experience shows - and that experience was anticipated when s. 74 was enacted - that it is only those who dwell under a Federal Constitution who can become adequately qualified to interpret and apply its provisions."*

In the 1890's ***Constitutional Conventions*** there was much discussion between the delegates about whether the Privy Council should even have a role. It was thought that members of the Queen's council would not know the Australian Constitution well enough to make judgements on it. The first draft of the Constitution from 1891 stipulated that appeals from State Courts should be brought to the High Court of which judgements would be final, but that the Queen would have some power to grant leave of appeal to herself in some cases. Section 74 was omitted in the final draft and some extra words were added to the covering clauses to preserve the prerogative of appeal with respect to decisions of the High Court and State Supreme Courts. The British Parliament objected, and the eventual section 74 was a compromise. The imperial authorities saw the role of the Privy Council as a unifier of the English common law throughout the British Empire.

In ***Kirmani v Captain Cook Cruises Pty. Ltd [No. 2] [1985] HCA 27*** the High Court denied an application by the Attorney-General of Queensland seeking a certificate that would permit the Privy Council to hear an appeal from the High Court's decision in *Kirmani v Captain Cook Cruises Pty Ltd (No 1) [1985] HCA 8.* Further, the High Court held that it would never again grant a certificate of appeal, stating (at 5):

> *"Although the jurisdiction to grant a certificate stands in the Constitution, such limited purpose as it had has long since been spent. The march of events and the legislative changes that have been effected - to say nothing of national sentiment - have made the jurisdiction obsolete."*

https://freemandelusion.com/wp-content/uploads/2019/06/kirmani-v-captain-cook-cruises-pty.-ltd-no.-2-1985-hca-27.pdf

Pursuant to section 11 of the *Australia Act 1986* all Privy Council appeals ended from Australian courts other than the High Court, where it remains theoretically possible for some appeals to be taken under Section 74 of the *Constitution*. Technically the High Court could still grant a certificate for appeal to the Privy Council, but this is unlikely. As ***Tony Blackshield*** writes about the effect of removing appeals to the Privy Council:

> *"The final abolition of Privy Council appeals has had a dramatic effect on the High Court's own jurisprudence. Many commentators have observed that the abolition did more than formally make the High Court the final court of appeal for all Australian matters. It also contributed to a new judicial mindset. Liberated from the correction of a higher court and then from competition*

in relation to appeals from state courts, the High Court became the true apex of the Australian hierarchy and took a new responsibility for shaping the law for Australia."

The Influence of the Privy Council on Australia - Murray Gleeson (2007):

https://freemandelusion.com/wp-content/uploads/2022/04/The-Influence-of-the-Privy-Council-on-Australia-Murray-Gleeson.pdf

The UK House of Lords

There was a viral rumor that Rodney Culleton had an ongoing matter before the UK Privy Council, and the UK High Court, and a similar rumour regarding the UK House of Lords, implying that they have some sort of jurisdiction over Australian affairs. Rodney Culleton had sought their assistance in remedying his unfounded fears of a constitutional crisis. (See articles "***Rodney Culleton***" and "***The UK High Court application by the Great Australian Party***").

Theresa May
Prime Minister
10 Downing Street
London
SW1A 2AA

Neil Piccinin
care of:
[redacted]
St Mary Cray
Orpington
BR5 4AA

Postal No: SJ 7702 1640 1GB

April 25,2019

Delivery of the Prayer to the Lords
and related documents for Restoration of the Commonwealth of Australia

Dear Prime Minister,

I write to you, as a matter of delivery of information of paramount importance, with reference to Her Majesty's constitutional role within the Commonwealth of Australia, and your role thereto.

The enclosed set of evidentiary documents and declared certificates are prefaced with a letter of introduction by a Senator of the federal parliament (in exile) with a petition, of right, for *Restoration of the Commonwealth of Australia*.

This letter and the bound set of documents comprising the opening letter of Senator Culleton, the Prayer to the Lords, the Certificate of Harry Hopes on judicial jurisdiction in Western Australia and another on the validity on the *Royal Style and Titles Act 1973* (Cth) accompanied with five FOI findings by the Department of the Prime Minister and Cabinet (2004 – 2015) provide the gravitas cause for attention by the government of the United Kingdom to attend to obligatory matters outstanding in Australia: the Commonwealth of Australia.

Such obligation, not having been statutorily amended or removed from the *Commonwealth of Australia Constitution Act 1900*, is current and enforcable against the Crown for which instrument belongs.

The included document of Darren Dickson, of Melbourne, referenced within the said prayer, is of outstanding reference to the two constitutional reports of 1988 within which details several legal anomalies for departure of the constitutional norms, for application of the Crown, that is evidence, of the knowledge at 1988, of the apparent treachery and sedition in the lawmaking and judicial machinery of governance within Australia, requiring attention.

I trust that the representation of information that had been in the hands of Andrea Leadsom, for the Commons, and Mark Cooper, for the Lords, will not escape your attention, and those entrusted with fiduciary duty for the people of the Commonwealth of Australia, in restoring Her Majesty's role.

If any material thing within the documents may be denied, be mistaken or otherwise found for error, by those charged with responsibility, I shall attend accordingly for the record.

I have the honour to be Her Majesty's humble and obedient servant,

Neil Piccinin

For those who are unaware, the UK House of Lords is the Upper House of the UK government system, and the Lower House is the UK Parliament. We have an identical system here in Australia based on the Westminster design. Here in Australia, the Upper House of the Commonwealth is the Senate, and the Lower House is the Commonwealth Parliament. Here is a good comparison of the ***House of Lords and the Australian Senate***. There are no appeals to the Upper House of a government of a foreign nation.

Even prior to the passing of the *Australia Act 1986*, in his 1977 State of the Judicature address, Sir Garfield Barwick announced that the High Court did not regard itself as bound by decisions of the House of Lords and in future would not regard itself as bound by decisions of the Privy Council in *The State of the Australian Judicature (1977) 51 ALJ 480* (at 485)

In *Viro v. R. (1978) 18 A.L.R. 257* (at 282-283) Gibbs J., commenting that although the High Court no longer regarded itself as bound by decisions of the House of Lords it nevertheless continued to recognise *"their peculiarly high persuasive value"*, suggested:

> *"We ought now to regard a decision of the Privy Council as even more highly persuasive [than those of the House of Lords], if that is possible, by reason of the very fact that its decisions remain binding on the States."*

The Authority of Privy Council Decisions in Australian Courts - Robert Geddes (1978):

https://freemandelusion.com/wp-content/uploads/2019/06/the-authority-of-privy-council-decisions-in-australian-courts.pdf

Then came the *Australia Act 1986*, as Gleeson J. points out in ***The Privy Council - An Australian Perspective*** (2008), the former restrictions on legislative powers of Parliaments of States were terminated, as ***section 3. subsection (2)*** provides:

> *"No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State."*

The responsibility of the United Kingdom Government in relation to State matters was terminated by ***section 10***, which provides:

> *"After the commencement of this Act Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any State."*

https://freemandelusion.com/wp-content/uploads/2019/06/the-privy-council-an-australian-perspective.pdf

Sue v Hill [1999] HCA 30 (from 95):

"Almost a century has passed since the enactment of the Constitution Act in the last year of the reign of Queen Victoria. In 1922, the Lord Chancellor observed that doctrines respecting the Crown often represented the results of a constitutional struggle in past centuries, rather than statements of a legal doctrine. The state of affairs identified in Section III of these reasons is to the contrary. It is, as Gibbs J put it, "the result of an orderly development – not … the result of a revolution". Further, the development culminating in the enactment of the Australia Act (the operation of which commenced on 3 March 1986) has followed paths understood by constitutional scholars writing at the time of the establishment of the Commonwealth. The point of immediate significance is that the circumstance that the same monarch exercises regal functions under the constitutional arrangements in the United Kingdom and Australia does not deny the proposition that the United Kingdom is a foreign power within the meaning of s 44(i) of the Constitution. Australia and the United Kingdom have their own laws as to nationality so that their citizens owe different allegiances. The United Kingdom has a distinct legal personality and its exercises of sovereignty, for example in entering military alliances, participating in armed conflicts and acceding to treaties such as the Treaty of Rome, themselves have no legal consequences for this country. Nor, as we have sought to demonstrate in Section III, does the United Kingdom exercise any function with respect to the governmental structures of the Commonwealth or the States."

https://freemandelusion.com/wp-content/uploads/2020/10/sue-v-hill-1999-hca-30.pdf

It is also overlooked by Rodney Culleton that the UK are obliged to their own legislation. Firstly, we can look at the *Statute of Westminster 1931*, adopted in Australia in 1942. Section 2 states: *"No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion."*

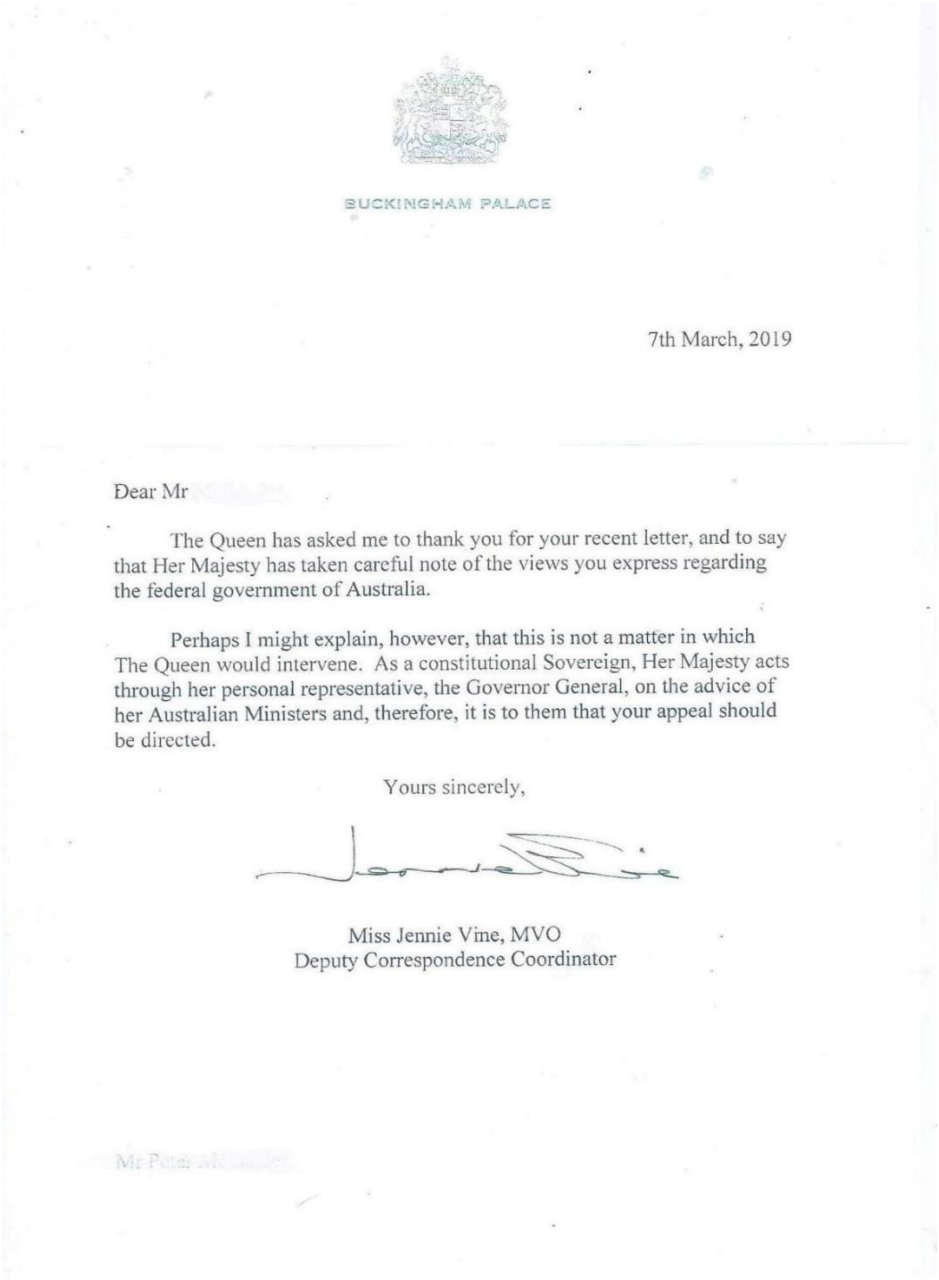
The *Australia Act 1986 (UK)* is also a UK Act, not an Australian Act, passed by the UK Parliament, not the Commonwealth Parliament. ***Section 11*** of the UK version, just like the Australian version, also states: *"Termination of appeals to Her Majesty in Council: "..no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of the Parliament of the United Kingdom, the Royal Prerogative or otherwise, from or in respect of any decision of an Australian court."*

The responsibility of the United Kingdom Government in relation to State matters was likewise terminated by ***section 10***, of the UK version, which states: *"After the commencement of this Act Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any State."*

David Fitzgibbon likewise attempted to take a matter to the British High Court in 2004, in ***Fitzgibbon v HM Attorney General [2005] EWHC 114 (Ch).*** The case was dismissed by Justice Gavin Lightman, who noted that not only did he have no say over the case, but even if he did rule in favour of Mr Fitzgibbon the Australian Government, independent since 1901, could ignore him completely.

"It is for the Australian courts to apply Australian law to determine the capacity in which Her Majesty the Queen is acting, the appropriate seal and the consequences, if any, if the wrong seal is used. It is not for the UK courts to enter the field, proffering their view as the to the proper interpretation of the Constitution." Calling Mr Fitzgibbon's action *"quite purposeless",* the Chancery Division's Master Bencher Bowman said: *"The claim should be struck out on the basis of hopelessness … and, where appropriate, embarrassment."*

This letter from Buckingham Palace is Her Majesty's latest response, to a question that has been asked many times.



BUCKINGHAM PALACE

7th March, 2019

Dear Mr

The Queen has asked me to thank you for your recent letter, and to say that Her Majesty has taken careful note of the views you express regarding the federal government of Australia.

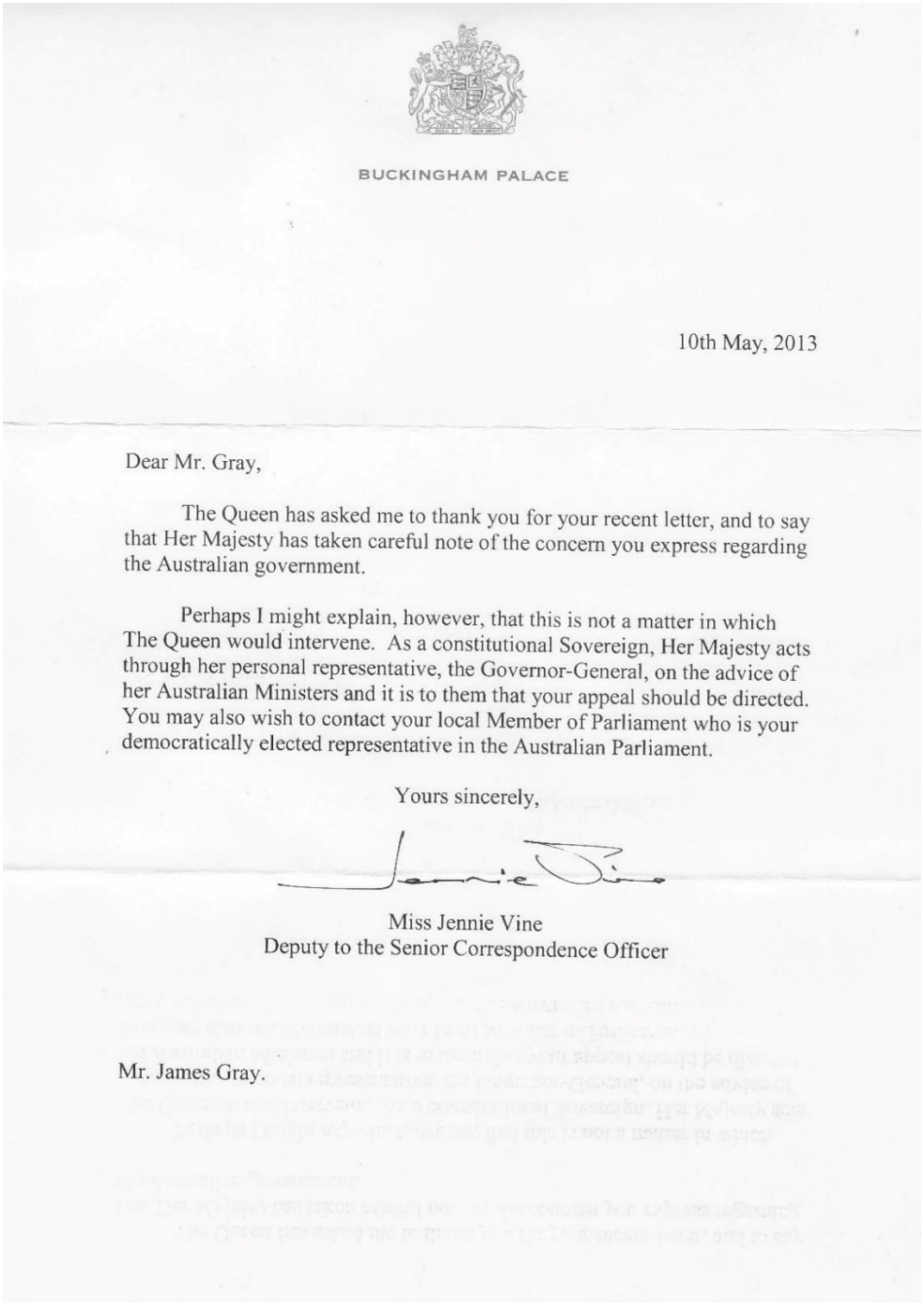
Perhaps I might explain, however, that this is not a matter in which The Queen would intervene. As a constitutional Sovereign, Her Majesty acts through her personal representative, the Governor General, on the advice of her Australian Ministers and, therefore, it is to them that your appeal should be directed.

Yours sincerely,

Miss Jennie Vine, MVO
Deputy Correspondence Coordinator

Mr Peter

An earlier response from the Palace was answered nearly identically.



BUCKINGHAM PALACE

10th May, 2013

Dear Mr. Gray,

The Queen has asked me to thank you for your recent letter, and to say that Her Majesty has taken careful note of the concern you express regarding the Australian government.

Perhaps I might explain, however, that this is not a matter in which The Queen would intervene. As a constitutional Sovereign, Her Majesty acts through her personal representative, the Governor-General, on the advice of her Australian Ministers and it is to them that your appeal should be directed. You may also wish to contact your local Member of Parliament who is your democratically elected representative in the Australian Parliament.

Yours sincerely,

Jennie Vine

Miss Jennie Vine
Deputy to the Senior Correspondence Officer

Mr. James Gray.

And the response to reinstate Gough Whitlam as Prime Minister in 1975 was even more explicit.

BUCKINGHAM PALACE

17th November, 1975

Dear Mr Scholes

I am commanded by The Queen to acknowledge your letter of 12th November about the recent political events in Australia. You ask that The Queen should act to restore Mr. Whitlam to office as Prime Minister.

As we understand the situtation here, the Australian Constitution firmly places the prerogative powers of the Crown in the hands of the Governor-General as the representative of The Queen of Australia. The only person competent to commission an Australian Prime Minister is the Governor-General, and The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution. Her Majesty, as Queen of Australia, is watching events in Canberra with close interest and attention, but it would not be proper for her to intervene in person in matters which are so clearly placed within the jurisdiction of the Governor-General by the Constitution Act.

I understand that you have been good enough to send a copy of your letter to the Governor-General so I am writing to His Excellency to say that the text of your letter has been received here in London and has been laid before The Queen.

I am sending a copy of this letter to the Governor-General.

Yours sincerely

Martin Charteris

The Honourable G.G.D. Scholes.