



**Australian Government**  
**Productivity Commission**

# Restrictions on the Parallel Importation of Books

Productivity Commission  
Research Report

June 2009

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***The Productivity Commission***

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website ([www.pc.gov.au](http://www.pc.gov.au)) or by contacting Media and Publications on (03) 9653 2244 or email: [maps@pc.gov.au](mailto:maps@pc.gov.au).

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# Foreword

Books play an important role in Australian society, informing and entertaining readers, recording historical events and helping to shape our culture.

The ‘parallel importation’ of books that have been published in Australia is subject to legislative restrictions. The Commission was asked to assess the effects of these restrictions on the community and to determine whether they should be retained, modified or repealed.

In preparing its report, the Commission has drawn on a range of evidence, including material put forward in a large number of submissions and during consultations with participants from both industry and government. Reflecting extensive feedback on the discussion draft, together with further research and deliberation by the Commission, the central recommendation in this final report has been changed significantly from that in the discussion draft.

The study was overseen by Deputy Chairman Mike Woods and Commissioner Louise Sylvan. It was undertaken by a staff research team, led by Tom Nankivell, located in the Commission’s Canberra office.

Gary Banks AO

Chairman

June 2009

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# Terms of reference

## **Copyright Restrictions on the Parallel Importation of Books into Australia**

The Productivity Commission is requested to undertake a study on the current provisions of the *Copyright Act 1968* (the ‘Copyright Act’) that restrict the parallel importation of books and report within 6 months of receiving this request.

### **Context**

The Council of Australian Governments (COAG) has endorsed a new competition reform agenda designed to enhance Australia’s longer term growth prospects. To advance this work, a number of priority areas have been identified for review. The Productivity Commission is requested to provide advice on the potential for reform with respect to the parallel importation of books.

### **Background**

The Copyright Act gives authors (which includes creators of literary and artistic works) a number of exclusive rights over their original works which provide an economic incentive to promote the creation and distribution of new works for the benefit of the community.

Within these rights, copyright owners through their licensing arrangements, are able to prevent the importation into Australia of books that have been lawfully published in another country (ie ‘parallel imports’). The operation of these provisions potentially results in higher prices and less availability of books to the disadvantage of Australian consumers.

In 1991 amendments were made to the Copyright Act restricting the use of the rights with respect to imported books. Essentially, the amendments permit the parallel importation of lawfully published books where there has been a failure to supply the Australian market once the book has been published in another country. These changes were intended to address concerns about delays in obtaining copies of overseas books.

However, there are a range of views about whether the provisions result in significantly higher prices for Australian consumers compared to other markets.

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## **Scope of Study**

In undertaking this study, the Commission is to examine the present provisions with respect to the parallel importation of books – which include exceptions to copyright – having regard to, and where possible quantifying:

- the extent to which the provisions promote and achieve the objectives of the Copyright Act;
- whether the provisions amount to a restriction on competition;
- if so, the costs, benefits and effects of the restriction;
- whether the benefits to the community from the present provisions outweigh any costs from restricting competition; and
- any identified options for reform, including non-legislative approaches, and any transitional arrangements.

## **Key Considerations**

In conducting the study the Commission shall have regard to:

- the impacts on all relevant industry groups including authors, publishers, printers, distributors, retailers, consumers, libraries and educational institutions (including small and medium business);
- the intended objectives of the parallel importation provisions within the overall policy framework of the Government including competition, intellectual property, trade and industry policies;
- approaches adopted in comparable other countries;
- relevant rights and obligations under international treaties to which Australia is a party; and
- the conclusions and recommendations made in other relevant reviews and the views of relevant stakeholders.

The Commission is to undertake an appropriate public consultation process including the invitation of public submissions.

CHRIS BOWEN

Assistant Treasurer

[Received 13 November 2008]



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# Contents

Foreword	III
Terms of reference	IV
Abbreviations	IX
Glossary	XI
<b>Key points</b>	XIV
<b>Overview</b>	XV
<b>Recommendations</b>	XXV
<b>1 About the study</b>	1.1
1.1 Background	1.1
1.2 Scope of the study	1.3
1.3 Conduct of the study	1.4
1.4 The Commission’s approach	1.5
1.5 Commentary on the discussion draft	1.6
<b>2 An overview of the books sector</b>	2.1
2.1 Consumption of books	2.2
2.2 Supply of books	2.9
2.3 Producing a book in Australia	2.11
<b>3 Copyright law and the broader policy environment</b>	3.1
3.1 Copyright Act provisions	3.2
3.2 Objectives of the provisions	3.5
3.3 The broader policy environment	3.9

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<b>4</b>	<b>Price and assistance effects</b>	4.1
4.1	Potential price and assistance effects	4.2
4.2	Evidence on the price effects	4.8
4.3	Interpreting the evidence	4.21
<b>5</b>	<b>Impacts in the books market</b>	5.1
5.1	Publishers	5.2
5.2	Authors	5.12
5.3	Printers	5.16
5.4	Booksellers	5.20
5.5	Consumers	5.27
<b>6</b>	<b>Cultural and related impacts</b>	6.1
6.1	Cultural benefits	6.2
6.2	Educational benefits	6.12
6.3	Effects on external benefits	6.13
6.4	Summing up	6.17
<b>7</b>	<b>Net impacts and policy implications</b>	7.1
7.1	The PIR balance sheet	7.2
7.2	The reform options	7.6
7.3	The preferred approach	7.19

## **Appendices**

A	Public consultation	A.1
B	Other matters	B.1
C	Reform case studies	C.1
D	Price comparison methodologies	D.1
E	Market share methodology	E.1
F	Design of financial support	F.1

References	R.1
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# Abbreviations

ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ADA	Australian Digital Alliance
ALAA	Australian Literary Agents' Association
ALCC	Australian Libraries Copyright Committee
ANZ	Australia and New Zealand
ARIA	Australia Recording Industry Association
ASP	Average Selling Price
BIAP	Book Industry Assistance Plan
CAL	Copyright Agency Limited
CD	Compact Disc
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
DDS	Discount Department Store
ELR	Educational Lending Right
GBP	United Kingdom Pound
GST	Goods and Services Tax
IPA	International Publishers Association
ISBN	International Standard Book Number
MPG	McPherson's Printing Group
NCP	National Competition Policy
NECG	Network Economics Consulting Group
NRA	National Reform Agenda
PC	Productivity Commission
PIAA	Printing Industries Association of Australia

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PIR	Parallel Import Restriction
PLR	Public Lending Right
PSA	Prices Surveillance Authority
RRP	Recommended Retail Price
TPA	Trade Practices Act
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UK	United Kingdom
US	United States
USD	United States Dollar
VAT	Value Added Tax

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# Glossary

<b>Australian edition</b>	A version of a book produced under licence by an Australian publisher.
<b>Back list</b>	Editions of titles in print that have been on the market for 12 months or more.
<b>Current list</b>	Front and back list titles currently in print; not remainders or out-of-print titles.
<b>Educational book</b>	A book written, published and prescribed or recommended for a primary, secondary or tertiary education course; or a professional or reference text.
<b>Foreign edition</b>	A version of a book produced under licence by an overseas publisher.
<b>Format</b>	Relates to the size, cover and binding of a book, such as A format (small) paperbacks, B format (regular) paperbacks and C format (large or ‘trade’) paperbacks or hardbacks.
<b>Front list</b>	Editions of titles that have been on the market for less than 12 months.
<b>Literary work</b>	An author’s written material within a book that is protected by copyright.
<b>Parallel importation</b>	Importation of a book legitimately supplied overseas, for which there is an authorised locally published version.
<b>Recommended retail price</b>	The price for which a publisher recommends that a book be sold, which is sometimes printed on the cover.
<b>Remainders</b>	Books that are dramatically reduced in price by publishers to liquidate stock.
<b>Royalty</b>	Payment by a publisher to an author for the use of his or her literary work.

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**Sale or return**

When stock that is supplied by a publisher to a bookseller may be returned to the publisher if unsold after a period.

**Trade book**

A book written for general reading purposes.

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# OVERVIEW

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## Key points

- Parallel Import Restrictions (PIRs) provide territorial protection for the publication of many books in Australia, preventing booksellers from sourcing cheaper or better value-for-money editions of those titles from world markets.
- From the available quantitative and qualitative evidence, the Commission has concluded that the PIRs place upward pressure on book prices and that, at times, the price effect is likely to be substantial. The magnitude of the effect will vary over time and across book genres.
- Most of the benefits of PIR protection accrue to publishers and authors, with demand for local printing also increased.
- Most of the costs are met by consumers, who fund these benefits in a non-transparent manner through higher book prices.
- Some of the effects represent transfers from book purchasers to local copyright holders, but the restrictions also cause economic inefficiencies and a significant transfer of income from Australian consumers to overseas authors and publishers.
- Consumers of culturally significant books directly benefit from their cultural value. At the same time, the PIRs make a contribution to the 'cultural externalities' of books that benefit the broader community.
- PIRs are a poor means of promoting culturally significant Australian works.
  - They do not differentiate between books of high and low cultural value.
  - The bulk of the assistance leaks offshore, and some flows to the printing industry.
- Reform of the current arrangements is necessary, to place downward pressure on book prices, remove constraints on the commercial activities of booksellers and overcome the poor targeting of assistance to the cultural externalities.
- The reform option proposed in the discussion draft was for a 12 month territorial protection within the existing framework. Many participants claimed that it would cause undue distortions between different genres of books. There was also mixed, but critical, commentary about its impact on the industry.
- Having considered industry feedback and undertaken further analysis, the Commission is recommending that the PIR provisions be repealed, and that:
  - Three years notice should be given to facilitate industry adjustment.
  - Current financial assistance for encouraging Australian writing and publishing should be reviewed immediately, and any changes implemented prior to the repeal of the PIRs. The new arrangements should be reviewed after five years.
  - To assist in monitoring the impact of these changes, the ABS should undertake a revised version of its 2003-04 industry survey as soon as possible and update it prior to the five year review.

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# Overview

Australians are avid book readers. New book sales have recently been running at around \$2.5 billion per annum. While books are primarily sources of information, interest and entertainment, they can also be tools of learning or earning, repositories of history or markers of cultural identity. Reading also improves literacy, which is fundamental to individual wellbeing and to the smooth functioning of society and the economy.

The Commission has been requested to examine the various effects of the restrictions on the parallel importation of books that have been published in Australia, and to assess whether the restrictions should be retained, modified or repealed. This final report completes the Commission's analysis. It follows on from the March discussion draft, feedback on that draft and subsequent further analysis by the Commission.

## **The books market**

The books market displays considerable diversity. 'Trade' books, which account for around 60 per cent (by value) of new book sales, range from narratives published in monocolour (novels, histories, biographies etc.) to children's stories and special interest colour books (food, gardening, travel etc.). The other 40 per cent of sales comprise educational, professional and reference texts.

Trade books produced by publishers are sold through a variety of channels. There is strong retail competition on a range of 'front list' titles, with many discount department stores frequently selling bestsellers for substantially less than the recommended retail price. This puts some pricing pressure on the retail book chains, while independent bookstores compete more on levels of customer service. An increasing number of Australians have been bypassing local 'bricks and mortar' bookshops and purchasing online. Consumers can also access books from libraries, friends and family or purchase them second-hand.

In the education sector, competition between publishers for a textbook to be adopted for a particular course is focussed on the lecturer and other decision-makers, rather than on the student purchasers.

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The Commission estimates that around one-third of all trade books sold in Australia are Australian-authored, and that more than two-fifths (by value) of trade books (whether written by local or foreign authors) are locally published. Most of Australia’s larger trade publishers are local arms of foreign companies, as are the main specialist education publishers.

A significant proportion of the books published in Australia is also printed here. There are two main plants: one in Adelaide and the other in regional Victoria. They produce predominantly monochrome paperbacks; most colour printing is sourced off-shore.

## **Parallel import restrictions**

The reproduction and first sale of books in Australia is governed by the *Copyright Act 1968*. In essence, copyright law aims to achieve a balance of incentives for the creation and diffusion of creative works, including books. This core copyright protection, which provides incentives for creative endeavour *per se*, is not the subject of this study.

Separate and additional to the core copyright protections, the Act contains Parallel Import Restrictions, or ‘PIRs’, which largely protect publishers and authors who hold the Australian rights to a title from competition by suppliers of foreign editions of that title. The mechanics of the PIRs are set out in box 1.

All major English language markets, including the United Kingdom (UK), the United States (US) and Canada, also have PIRs, although without time requirements for first publication. New Zealand, on the other hand, is an unrestricted market (although it operates, in practice, largely as part of a collective ‘ANZ’ market).

## **The study’s scope and approach**

The terms of reference (set out at the front of the report) have several facets, but in essence the Commission has been requested to assess:

- the benefits and costs of the PIRs
- the merits of options for reform.

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**Box 1      The mechanics of the parallel import restrictions**

For a title to qualify for protection under the PIRs, the Australian territorial rights holder must release the book in Australia within 30 days of it being published elsewhere in the world, and must maintain a capacity to resupply it within 90 days. There are some exceptions to the restrictions — consumers can purchase books from abroad, for example via the internet and, under the ‘single use’ provisions, a bookseller can purchase a single copy of a book that would otherwise be PIR-protected, to fill a specific customer order.

Under the PIRs, if a particular novel or textbook is published in Australia within the 30 day limit, booksellers cannot import and sell stocks of the same book from, say, the UK, the US or Asia. This enables rights holders to charge prices (or obtain royalties) in the Australian market with the certainty that they cannot be undercut by commercial quantities of imports of the same titles.

Assistance from Australia’s PIRs is not limited to Australian publishers and authors. The publishers who benefit from territorial protection can be Australian businesses, Australian arms of international companies or international companies operating from other countries. Likewise, the works of both Australian and foreign authors are equally protected from parallel imports into Australia.

In making such assessments, the Commission interprets ‘benefits’ and ‘costs’ in their fullest sense — that is, covering the value of social, cultural and educational matters, as well as financial or material ones — and assesses them within a community-wide framework. Thus, while the terms of reference require that regard be had to the effects of PIRs on all relevant industry parties, the Commission has not directed its interest only to the impacts on copyright holders or other stakeholders in the books industry. What matters ultimately is the wellbeing of the community as a whole.

In preparing this report, the Commission consulted as widely as possible within the timeframe provided for the study. Prior to the release of the discussion draft, it held discussions with more than 30 industry stakeholders and government bodies, and received more than 270 submissions. Four workshops were convened to facilitate debate about the draft and around 290 further submissions were received. Industry participants also helpfully clarified various issues when approached by the Commission. The Commission was granted an extension of the reporting date to 30 June 2009.

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## Assessing the benefits and costs

Conceptually, PIRs are similar to other import restrictions in that they benefit local producers by cushioning or shielding them from foreign competition. Experience in other sectors has shown that import restrictions can adversely affect consumers through the availability, quality and prices of the goods or services concerned, and can have broader resource efficiency costs.

In terms of availability, as a result of reforms to the PIRs in 1991, most books are now published in Australia in a timely manner. There also appears to be no general problem with the quality of service.

Most of the key impacts of the PIRs therefore stem from their effects on book prices.

### Price impacts

Many previous studies have sought to measure the price impacts of PIRs by comparing book prices in Australia with the prices of the same titles in the UK and the US. Several study participants submitted similar comparisons. While these comparisons reveal no clear and consistent pattern, they suggest at a minimum that some books are available at a lower price overseas. They also demonstrate, unsurprisingly, that the strength of the Australian dollar has a major influence on measured price differences at any point in time.

The Commission has also undertaken its own, more extensive, analysis of international book price data.

The analysis demonstrates that ‘like editions’ of many current list trade books are sold at a lower price in the UK and/or the US than in Australia. In some instances, the price differential is substantial. For example, the Commission’s price comparisons found that, in 2007-08, a selection of around 350 trade books sold in Australia were on average 35 per cent more expensive than like editions sold in the US (even after accounting for the effects of GST). In many cases, the price difference was greater than 50 per cent. And when the Commission extended the range of editions of titles that it was comparing, the price differences widened further.

While recognising the inherent limitations of price comparisons, these results together with other available evidence make it clear that, but for the PIRs, Australian booksellers could have obtained and shipped many trade titles to Australia for significantly less than they are currently charged by Australian publishers. Of course, were PIRs not in place, local publishers may be more attentive to the prices of competing foreign editions when setting their own prices.

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When the Australian dollar is relatively weaker against other currencies, as it was for much of 2008-09, average price differentials will be smaller or may even reverse in direction. That is, it is possible that the *average* price of trade books in Australia will in some years be lower than the *average* price of equivalent editions in the UK and/or US. However, given the wide spread of price differentials around the average, and the availability at times of cheaper formats overseas, there are still opportunities in such periods to source some current list trade books at a lower cost to booksellers from the UK or US. And while there is already an extensive trade in remainders in Australia, this could extend further were the PIRs to be abolished.

In the educational books sector, English-language textbooks sold in Asia, some of which are essentially identical in content to those sold in Australia, concurrently sell for less than half the price of Australian editions (which, themselves, often sell for 30 per cent below US prices).

In analysing the comparisons, it is relevant to remember that prices in the UK and US markets are themselves inflated by restrictions on parallel book imports. Different import sources might emerge for some titles in the absence of the PIRs in Australia.

More generally, the greater actual or potential overseas competition consequent on the removal of the PIRs would increase the pressure on parts of the local industry to improve their efficiency. This may also lower prices. While there have been productivity gains to date, a number of study participants identified distribution, in particular, as having scope for greater improvement.

In sum, drawing on a range of quantitative and qualitative evidence, the Commission concludes that the PIRs place upward pressure on book prices and that, at times, the price effect is likely to be substantial. The magnitude of the effect will vary over time and across book genres.

## **Effects of the PIRs on the books sector and the broader economy**

The PIRs can benefit activity and employment in the production side of the local books industry in a range of ways:

- By protecting higher monetary returns from rights trading and local publishing activity, the PIRs enable publishers to increase their publishing portfolio and obtain some economies of scale and scope.
- In lessening import competition, PIRs provide greater certainty for local publishers and authors in investing resources in the production and creation of particular titles.
- The 30 day release rule encourages the timely publication of foreign-authored books in Australia, and there is greater demand for book printing in Australia.

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The higher prices charged by publishers that underpin these industry benefits are paid for in the first instance by booksellers, who are constrained in their dealings with publishers. Unlike overseas online book retailers, local booksellers are unable to take advantage of opportunities to supply cheaper imported editions of those titles that are currently protected. Ultimately, these costs flow on to consumers.

The PIRs will also have some diffuse effects on activity and employment in industries outside the books sector. Higher book prices can reduce consumer spending on other goods and services, while the expansion of book production reduces the resources available to other industries.

### **Net community-wide impacts**

Many of the benefits and costs of PIRs represent a transfer of resources from consumers and other industries to book producers. As such, they do not constitute a net benefit or net cost to the Australian economy, although they do have distributional implications. In particular, the higher prices arising from territorial protection disadvantage consumers.

There are also three categories of benefits and costs that do not ‘wash out’. These are central to the calculation of the net benefits or costs of the PIRs.

Support of a larger publishing industry and, as a consequence, more Australian authorship results in a greater portrayal of Australian events, as well as stories that are told by Australian voices.

Much of this cultural value of books is likely to be obtained directly by the readers, and captured in the prices paid in purchasing the books. Consumers typically choose some books because they potentially embody cultural value or may be culturally enriching to read. The Australian community more broadly benefits from these private actions — that is, there is a positive ‘externality’. PIRs contribute to those externalities.

The PIRs poorly target the cultural externalities. At one level, the higher prices benefit all protected titles, whatever their cultural merit, and, indirectly, benefit the broader range of books as well. And much of the ‘assistance’ provided by PIRs does not promote Australian-authored works.

In this context, much of the additional income from the higher book prices goes to overseas authors and publishers whose works are released in Australia. Indicative Commission estimates suggest that the additional income flowing overseas is around 1.5 times that retained by local copyright holders. In effect, PIRs impose a

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private, implicit tax on Australian consumers which is used largely to subsidise foreign copyright holders.

The PIRs also create a range of economic inefficiencies. Among other things, they lessen the imperative for the local book industry to operate at best practice. They also distort economic resources away from their highest value uses. As with trade barriers in other industries, the existence of these costs does not depend on whether other countries also have protected markets.

## **Assessing the policy reform options**

The Commission has concluded that the current arrangements are in need of reform, and has explored four main reform approaches.

### **Reducing the period of territorial protection**

In its discussion draft, the Commission proposed a set of reforms within the existing policy framework to reduce the adverse effects of the current PIR regime on the community while preserving assistance for Australian writing in recognition of the cultural externalities it supports.

In particular, the Commission proposed that the restrictions on parallel imports should apply for only 12 months from the date of first publication of a book in Australia, rather than the full term of copyright. This approach to reform would have enabled publishers to develop, publish and market new titles, establish lines of supply with booksellers and have guaranteed rights over all sales in the first year. This first-mover advantage, together with other advantages of local supply, would also have given local publishers a firm basis for competing with other suppliers for the remainder of a book's sales history.

Industry participants generally rejected the Commission's draft proposal, and drew attention to the distortions that it may cause between different genres of books, given their different sales patterns. Many authors, publishers and printers also considered that the outcome from the option proposed in the discussion draft would be much the same as full abolition of PIRs. On the other hand, some booksellers considered that the reform would do little to generate lower prices or improve efficiencies within the industry. In light of this response, the Commission undertook further analysis of the industry, carefully considered all submissions and reassessed the policy alternatives.

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## **Other reforms within the existing framework**

The Commission examined a range of other proposals that, either alone or in conjunction with other measures, might generate further competitive pressure, while retaining the framework of the PIRs.

One proposal was the retention of PIR protection only for books authored by Australian writers. It has some in-principle appeal as it could reduce both book prices and income leakage, while providing some support to realise the cultural externalities associated with local writing and publishing. However, it would run foul of international treaties to which Australia is a party, as would a proposal to protect ‘Australian versions’ of books.

Some participants advocated a price-cap model, wherein Australian publishers, to retain PIR protection on their titles, would need to keep their prices within check of foreign wholesale prices. While this would put some pressure on local prices, such a scheme would be complex to design, may have some unintended pricing impacts, and would remain a blunt instrument for targeting cultural externalities.

While the price cap model, and other proposals such as shortening the 90 day resupply rule, represent a potential improvement on the status quo, more robust reform options are likely to deliver greater net benefits.

## **Repealing the PIRs**

Given the flaws with the existing scheme as outlined earlier, and the lack of viable options for significant reform within the PIR framework, the Commission concludes that the PIRs should be repealed.

Immediate abolition of the PIRs could have significant adjustment costs for book producers, which suggests that there should be an adjustment period for the industry. The Commission is proposing that repeal take effect three years after announcement of the policy change.

## **Revising subsidy arrangements**

Some assistance is presently provided to local authorship and publishing through financial support arrangements such as the Australia Council grants. The grant funding is dispersed on the basis of a panel based selection process which among other things attempts to judge literary merit. The effectiveness of these schemes in generating cultural externalities is not clear.

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The Commission considers that the full range of current grants and financial assistance for the industry should be reviewed as soon as possible, with a view to better targeting cultural externalities, and any new arrangements put in place before the repeal of the PIRs takes effect.

### **Adjustment within the publishing sector**

While the Commission judges that the reforms would generate net benefits for Australia as a whole, abolition of the PIRs would — of themselves — cause some contraction or slowing in the growth in the book production industries. Similar effects have occurred in several other industries where the government has removed import protections or restrictions on competition, although the extent of the pending contraction has often been overstated by those in sectors facing reform.

Many publishers and authors have claimed that removal of PIRs would lead to very significant damage to their local industry, although a number of major publishers indicated that the impact would be more limited. Responses to a survey of 50 publishers indicated that, in the short-term (within 3 years), their Australian sales would contract on average by about 10 per cent. This follows several years of strong growth in the sector.

In the Commission's view, while removal of the PIRs should see an increase in imported books where these represent better value, it is probable that most Australian publishers, including the major publishing houses, would generally adapt to the new regime, that Australian stories and content will continue to be demanded and that talented and marketable Australian authors would continue to be widely published. Any pressure for contraction would also be ameliorated to the extent that subsidy arrangements were made more effective.

### **Monitoring the changes**

There nevertheless is inevitably some uncertainty about how the structure of the industry would change following the abolition of PIRs and any modification to the current subsidy arrangements, and how this would affect the cultural externalities the industry generates.

The Commission therefore proposes that the outcome from the repeal of the PIRs, together with the operation of any revised subsidy arrangements, should be monitored and assessed five years after their implementation. To assist that process, the Australian Bureau of Statistics should revise and update its 2003-04 surveys on the books industry and market prior to the repeal of the PIR provisions, to establish a

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base-line of the sector as it now is, and update them again prior to the commencement of the five year assessment.

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# Recommendations

## RECOMMENDATION 1

*The Government should repeal Australia's Parallel Import Restrictions (PIRs) for books. The repeal should take effect three years after the date that it is announced.*

## RECOMMENDATION 2

*The Government should, as soon as possible, review the current subsidies aimed at encouraging Australian writing and publishing, with a view to better targeting of cultural externalities. Any revised arrangements should be put in place before the repeal of the PIRs takes effect.*

## RECOMMENDATION 3

*The outcome from the repeal of the PIRs and any revised subsidy arrangements should be monitored and assessed five years after implementation. To assist that assessment, the Australian Bureau of Statistics should, as soon as possible, undertake a revised version of its 2003-04 surveys on the books industry and market, having regard to the information gaps and interpretation problems identified in this study and relevant data held by other agencies. It should then update these revised surveys prior to the commencement of the five year assessment.*



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# CHAPTERS



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# 1 About the study

## 1.1 Background

The production and sale of books is governed by copyright law which provides authors and publishers with a set of ‘exclusive rights’ over their work. Except in tightly prescribed circumstances, the law prevents others from publishing literary works without the permission of the copyright holder. Copyright law typically also contains parallel importing provisions that restrict foreign editions<sup>1</sup> of a book being imported and sold in competition with the local edition.

Copyright legislation in Australia predates federation, with restrictions on the parallel importation of books and other copyright material included from the outset. The current Copyright Act, when introduced in 1968, retained the import restrictions from earlier legislation. Other major English-speaking nations also have a long history of restricting parallel book imports and (other than New Zealand, which repealed its restrictions in 1998) continue to do so today.

Australia’s Parallel Import Restrictions (PIRs) have been reviewed frequently over the last two decades, amid concerns in some quarters that, as a result of these import restrictions, Australians may be paying too much for books and other copyright material. In general, the reviews found that the restrictions benefit local copyright holders but also affect competition and disadvantage consumers. Most have recommended that the PIRs be repealed (see box 1.1).

Although PIRs on musical CDs and computer software were abolished in Australia in 1998 and 2001 respectively, the restrictions on parallel imports of books have been retained, albeit with some amendments. In 1991, a ‘30 day release rule’ and a ‘90 day resupply rule’ were introduced to improve the timeliness and availability of titles on the Australian market. An attempt in 2001 by the (then) government to repeal the PIRs, in full, was blocked in the Senate.

Australian publishing output has grown markedly over the last two decades, and more Australian authors have found market recognition, both at home and abroad.

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<sup>1</sup> As well as restricting the parallel importation of foreign editions, such provisions also restrict the reimportation for commercial purposes of local editions that have been supplied abroad. For simplicity, and where relevant, the use of the term ‘foreign editions’ in this report should be taken to include local editions amenable to reimportation.

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### Box 1.1 Previous reviews of Australia's parallel importation laws

Australia's PIRs have been reviewed many times in the last 20 years. Previous reviews have taken a variety of approaches when assessing the PIRs. Most have recommended their removal.

The Copyright Law Review Committee reviewed the provisions in 1988. In recommending their general retention, it indicated among other things that it had insufficient evidence that books in Australia were being sold at 'unreasonably' high prices, although it emphasised that it had insufficient powers and resources to adequately investigate the matter. The Committee recommended some relaxation of the PIRs to improve the availability of titles, resulting in the subsequent introduction of the 30 day and 90 day rules in 1991.

Following that report, the Prices Surveillance Authority's (PSA 1989) surveyed the recommended retail prices of books principally in the Australian and the UK and US markets, finding prices to be on average higher in Australia. It recommended that the restrictions be removed, with some limited protection for Australian authors for a period of 10 years. The PSA recommendation to open the market was not adopted. The PSA updated its report in 1995 and concluded that, while the 1991 reforms had improved the timeliness of book releases in Australia, prices continued to be higher in Australia than in the UK and US.

The Australian Competition and Consumer Commission's (ACCC) 1999 and 2001 reports extended some of the PSA's price comparisons. The studies revealed that over a six-and-a-half year period, the price of bestselling books was generally higher in Australia than in the US and on par with prices in the United Kingdom, although these price differences varied over time. In particular, the ACCC found that, in 2001, book prices in Australia were lower on average than in the UK, and similar to those in the US. The 2001 report also noted that removal of the PIRs on books in New Zealand in 1998 had not caused the collapse in the industry that many had predicted. As in 1999, the 2001 ACCC report recommended that the laws be repealed.

In 2000, the Intellectual Property and Competition Review Committee (IPCRC 2000) examined the PIRs as part of the Australian Government's Legislative Review Program, as established by the Competition Principles Agreement. The Committee began with the presumption that restrictions on competition should be removed unless they result in a net benefit for the community, and there are not better alternatives. It concluded that the costs of removing the restrictions were likely to be small relative to the gains to Australia. The report noted that the net income leakage to foreign copyright holders ensuing from the PIRs was potentially significant.

In addition, the Senate Legal and Constitutional Legislation Committee reviewed the available evidence on the effects of the PIRs in 2001. The majority report recommended that legislation to remove the restrictions proceed to the parliament. However, two minority opinion reports recommended against removal, citing concerns about piracy and the viability of the Australian books industry.

The parallel importation laws have not been reviewed since 2001.

*Source:* ACCC (1999, 2001), CLRC (1988), IC (1996), IPCRC (2000), PSA (1989, 1995), SLCLC (2001).

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Meanwhile, a range of developments has begun to emerge that could, in time, appreciably affect the nature, production and sale of books, with implications for the operation and impact of the PIRs. The most prominent to date has been the rise of online book retailers. Australian consumers can now effectively parallel import books themselves, as soon as they are released anywhere in the world, and can take advantage of different prices and format choices, as well as the GST-free status of books purchased online from abroad. Other emerging developments affecting the books sector include the digitisation of texts, the diffusion of e-books and the deployment of ‘print-on-demand’ technologies. These latter developments are still in their infancy and their full ramifications are presently unclear.

## 1.2 Scope of the study

In August 2008, the Council of Australian Governments decided that Australia’s PIRs on books should be reviewed by the Productivity Commission, as part of the Council’s renewed competition policy agenda. On 13 November 2008, the Commission received a reference from the Assistant Treasurer, requesting that it undertake this study and report within six months. The terms of reference are reproduced at the front of this report.

In essence, the Commission has been requested to examine: the extent to which the PIRs promote and achieve the objectives of the Copyright Act; the benefits and costs of the restrictions on all affected parties; and options for reform. In doing so, it is required to have regard to: the impact on all relevant industry groups; the intended objectives of the parallel import provisions within the Government’s overall policy framework; approaches adopted in comparable countries; relevant international treaties; and the findings of other relevant reviews.

Importantly, although the title for this study refers to ‘copyright restrictions’, the study is not about the merits of copyright itself. The PIRs that are the subject of this study, while contained within the *Copyright Act 1968*, are additional to, and separable from, the core copyright protections for authors, publishers and other ‘creators’ contained in the Act. Further, while Australia has ratified some international treaties<sup>2</sup> that require signatories to provide a range of copyright protections, those treaties do not oblige signatories to restrict the parallel importation of copyright material.

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<sup>2</sup> These treaties include the *Berne Convention for the Protection of Literary and Artistic Works*, which was created in 1886 as the first attempt to create an international system of copyright, and the 1994 agreement on *Trade Related Aspects of International Property Rights*.

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For the purposes of this study, the Commission has followed the approach in section 44A of the Copyright Act of interpreting the term ‘books’ to have its usual meaning while excluding computer software manuals, periodicals and those books whose main content is a transcription of musical works.

### 1.3 Conduct of the study

In accordance with the *Productivity Commission Act 1998*, the Commission has sought to maximise the transparency of this study, including by providing as much opportunity as possible for interested parties to have input, within the limited timeframe provided for the study. Accordingly, the Commission:

- upon receipt of the reference, advertised the study on its website, in newspapers and in an initial circular, which was distributed to potentially interested parties
- visited or had phone discussions with a range of authors, booksellers, publishers and printers, as well as a number of industry associations and government agencies, to gain a better understanding of aspects of the books sector (appendix A lists these visits and discussions.)
- released an issues paper on 26 November 2008, which expanded on the terms of reference and invited participants to lodge written submissions by 20 January 2009
- released a discussion draft on 20 March 2009, which contained the Commission’s thinking at that stage of the study, and invited further submissions
- held roundtables in Melbourne and Sydney on 7 and 8 April 2009, respectively, to elicit some initial feedback on the draft
- communicated with a number of participants after the roundtables to clarify particular issues.

The Commission received some 272 submissions prior to the release of the discussion draft, and has received a further 288 submissions since then. These are listed in appendix A and are available on the Commission’s website. The Commission records its appreciation of the many people who have participated in the study.

As would be expected, most submissions have been made by people and entities closely associated with the books sector. The large majority of submissions support retention of the restrictions, and many have offered variations on a limited set of arguments. The Commission also received three petitions. One had 18 000 signatories, submitted by the Coalition for Cheaper Books, calling for the abolition of the restrictions (sub. DR509). Two petitions, together with almost 6000 signatories, were submitted by the Australian Society of Authors and the Australian

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Publishers Association, and called for the retention of ‘territorial copyright’ (subs. 118 and DR512).

In view of the large number of submissions received following the release of the discussion draft, the Commission requested, and was granted, an extension to the reporting date, to 30 June 2009. The Commission has considered the arguments contained in the post-draft submissions and undertaken additional analysis of the books industry. The final report reflects the Commission’s further deliberations.

## **1.4 The Commission’s approach**

While the terms of reference have several facets, the Commission’s overarching task has been to determine whether the current PIRs should be retained, modified or repealed. In doing so, the Commission has examined whether:

- the restrictions generate more benefits than costs for the Australian community
- there are other policy options that could generate greater net benefits.

In making such assessments, the Commission interprets ‘benefits’ and ‘costs’ in their fullest sense — that is, covering the value of social, cultural and educational matters, as well as financial or material ones — and assesses them within a community-wide framework, as required by the *Productivity Commission Act 1998*. Thus, while the terms of reference require that regard be had to the effects of PIRs on all relevant industry parties, the Commission has not directed its interest solely or necessarily primarily to the impacts on copyright holders or other stakeholders in the books industry. What matters ultimately is the wellbeing of the community as a whole.

Making such assessments is not a simple task, in part because restrictions on the parallel importation of books have an array of often complex effects. The benefits and costs associated with these effects vary across the books sector and the community generally. For some groups, including many authors, publishers and printers, the PIRs generate relatively direct and identifiable benefits. However, for many consumers of books and for workers, businesses and other entities outside the books sector, the impacts can be quite diffuse and less tangible.

Further, the terms of reference require the Commission to have regard to ‘the intended objectives of the parallel importation provisions within the overall policy framework of the Government including competition, intellectual property, trade and industry policies’. Although the terms of reference do not mention cultural matters explicitly, the Commission sees these as also being a pertinent aspect of the Government’s ‘overall policy framework’.

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There are thus many policies and impacts that are potentially relevant to the study. The challenge is to place them in a tractable analytical framework that creates clarity for weighing up the key policy considerations.

The analytical framework used in this study is essentially the same as that used in previous Commission studies into matters invoking significant social and cultural considerations, such as those dealing with broadcasting, heritage, gambling and social capital. Importantly, the framework's efficacy is not dependant on the quantification or even the individual identification of all the myriad impacts of the policies being studied. This is partly because, from a policy perspective, some impacts will be minor or offset by countervailing effects, and/or do not provide a rationale for government policy support. At the same time, the framework provides guidance on when government intervention may be warranted, and guidance on how it might be configured to meet particular goals.

## **1.5 Commentary on the discussion draft**

In submissions and some public commentary following release of the discussion draft, a number of members of the book industry criticised the draft on various grounds. These included concerns that the Commission:

- had failed to understand some aspects of the industry or had overlooked others
- did not have evidence to support some conclusions, and had overly relied on theory
- had made recommendations that would have no or little price impact but would cause significant damage to the local industry
- had rejected the views of the overwhelming bulk of submissions, which had favoured retention of the PIRs, broadly in their current form.

In making its assessments in the discussion draft, the Commission drew on a range of evidence that had been sourced from industry data, submissions and consultations with industry stakeholders, as well as its own research and analysis. Thus, while the timeframe provided for the study and the lack of up-to-date ABS industry data impacted on its analysis, the Commission was able to assemble a broad evidence base.

Much commentary which followed the discussion draft focussed on the evidentiary basis for the Commission's conclusions on the price effects of the PIRs. In this context, the Australian Publishers Association stated:

At most, the Commission judges that Australia's current territorial copyright rules "put upward pressure on prices in at least some segments of the books market" — but it cannot quantify the impact of that pressure, if any, and cannot explain why the rules do

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not have a consistent, measurable impact across all segments. The Productivity Commission offers no evidence for its findings — it clearly has not found any — only vague, theoretical justifications. (sub. DR513, p. 3)

In fact, the evidence drawn on by the Commission included:

- its own extensive quantitative price comparisons
- previous quantitative price comparisons undertaken by the Prices Surveillance Authority and the Australian Competition and Consumer Commission
- quantitative price comparisons submitted by industry participants
- qualitative evidence submitted by participants
- evidence of price changes in other markets following removal of PIRs
- previous research on the effects of other trade liberalisation actions.

As is typical in policy analysis in all fields, the Commission also drew on theory in various instances where the available evidence by itself could not sufficiently illuminate the issues at hand. Accordingly, it couched its analysis and conclusions carefully with the aim of neither overstating nor understating the level of certainty that attaches to them.

The issuing of a discussion draft is itself a means of eliciting additional evidence and of reducing uncertainties. It allows the Commission's preliminary thinking and judgments to be 'tested'. The post-draft report consultation process provided participants the opportunity to draw attention to any cases where the Commission may have overlooked or misconstrued evidence. While some of the responses to the discussion draft provided useful information on points of detail and nuance, they have not fundamentally altered the Commission's assessment of the effects of the PIRs. However, in relation to the appropriate way forward, the evidence received together with further research undertaken since the discussion draft has led the Commission to move away from the intermediate reform path that was proposed in the draft. The recommendations in this final report reflect the Commission's further considerations.

On the question of the 'volume' of support for various policy positions, this study has attracted a large number of submissions and some widely-subscribed petitions. However, as noted in the issues paper and the discussion draft, the Commission assesses all arguments on their merits, in the light of the evidence available to it, rather than on the frequency with which those arguments are put.

The contention underpinning much commentary (both prior to and following the discussion draft) — that reform to the PIRs would have little or no impact on book prices and yet would cause a significant contraction in local publishing — is not, in

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the Commission's view, sustainable. Among other things, as pointed out in chapter 4, if cheaper, or otherwise better value, books were not available for importation from overseas, removal of the PIRs would have little substantive impact on the industry.

In this context, the Commission notes that, during the debates about the reforms to Australia's PIRs in 1991 and New Zealand's PIRs in 1998, local book producers warned against the consequences of implementing those reforms. While those concerns may have been genuinely held, in neither case did they prove warranted — in the Australian case, quite the opposite. In this context, Kinokuniya Bookstores of Australia stated:

Throughout this debate publishers have commented on how the current PIRs have helped build the industry to its present-day state. This is interesting, considering the history of PIRs. When the 1991 [reforms to] PIRs were suggested, publishers spent an enormous amount of energy on retaining a closed market. The parameters changed in 1991 and publishers learnt to deal with the new set of rules, just as they would do if the rules changed again. (sub. DR288, p. 5)

This is consistent with the Commission's observations regarding reform in many other industries, where those facing changes in assistance often overestimate the adverse effects, while underestimating the benefits that might flow from the proposed reform.

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## 2 An overview of the books sector

### Key points

- The total market for books in Australia is around \$2.5 billion a year.
  - The market is split 60:40 between trade books (adult and children's) and educational books.
  - The sales pattern of books varies from title to title although, for many editions of trade books, a large share of lifetime sales occurs in the first year following publication. The majority of back list trade titles are sold in very small volumes.
- Most Australians read regularly and for various reasons. Their book purchasing decisions are influenced by a range of factors including price.
- Australians obtain books from a number of sources, including local book retailers, domestic or overseas online retailers, second-hand book stores, libraries and friends and family.
  - The bulk of new books are purchased from the more than 500 specialist chain and independent bookstores, though discount department stores are important outlets for better selling titles.
  - Online book sales are increasing, but still only account for a small share of the overall market.
- Many parties are involved in producing and distributing books, including authors, publishers, printers and literary agents.
  - There are more than 5000 (and some suggest as many as 10 000) full time and part time authors in Australia. In 2007-08, locally authored works accounted for around one third of sales of trade titles.
  - There are some 4000 book publishers in Australia, though a much smaller number of large publishers account for most of the activity in the sector.
  - The bigger publishers are mainly local arms of multinational firms. However, small to mid-size local publishers play an important role in the market.
  - Sales of rights to publish Australian works overseas have been growing strongly.
  - Local printing activity is dominated by the two largest printers which are able to provide quick turnaround to local publishers on higher volume, mono-colour titles. Most colour printing is undertaken overseas.

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The books sector is of considerable importance to the Australian economy and community. Sales of new books are currently around \$2.5 billion a year, providing income and an outlet for the work of several thousand authors and supporting the activity and employment of publishers, printers and book retailers. Moreover, as well as being sources of information and entertainment, books can be tools of earning or learning, repositories of history or even markers of cultural identity. And reading books improves literacy, which is fundamental to individual well-being and to the smooth functioning of society and the economy.

This chapter provides an overview of the books sector, including discussion of:

- the reading and purchasing habits of Australians such as: how often they read; what they read; and how much they spend on books
- where they source books from
- the production of books in Australia, focusing on the key players: authors; publishers; and printers.

It draws variously on: the now dated survey information previously published by the ABS; book market data purchased by the Commission from The Nielsen Company; information submitted by participants; and some recent third party surveys (see box 2.1).

## **2.1 Consumption of books**

### **Categories of books**

At a broad level, books fall into two main categories: educational and trade.

Educational books, which encompass primary, secondary and tertiary texts as well as professional and reference works, are typically ‘intermediate inputs’ into business and educational services and are often accompanied by supporting material to assist teachers and students. This supporting material may include: lessons plans; a dedicated website for extra material; interactive learning objects; downloadable templates; and up-to-date weblinks for further research.

In 2003-04, educational books accounted for around 40 per cent of the total value of books sales by Australian book retailers and local publishers direct to consumers (figure 2.1). Nothing submitted to this study suggests that this share has changed significantly since then. This category is dominated by the sale of primary, secondary and tertiary books. Professional and reference works accounted for just under one tenth of the overall market.

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## Box 2.1 The data challenge

### Information sources

Forming a comprehensive picture of the current size and make-up of the books sector is far from easy. For example, there is no single data source for the size of the books market. And the ABS last surveyed the publishing and retail sectors in 2003-04.

To supplement the somewhat limited and now dated ABS information, the Commission purchased a variety of data from The Nielsen Company's BookScan and BookData databases. BookScan monitors retail sales of trade books sold in chains, independent retailers and discount departments stores. BookScan members account for around 90 per cent of all retail trade sales in Australia. BookData is a global bibliographic database that holds records for more than 7.5 million titles, including detailed information relating to the various local and foreign editions of an individual book title.

The Commission has also drawn on the results of a survey on the publishing industry undertaken by the University of Melbourne. The survey covered over 50 respondent publishers, including a substantial majority of the larger Australian publishers.

Other surveys to which the Commission has had regard, include:

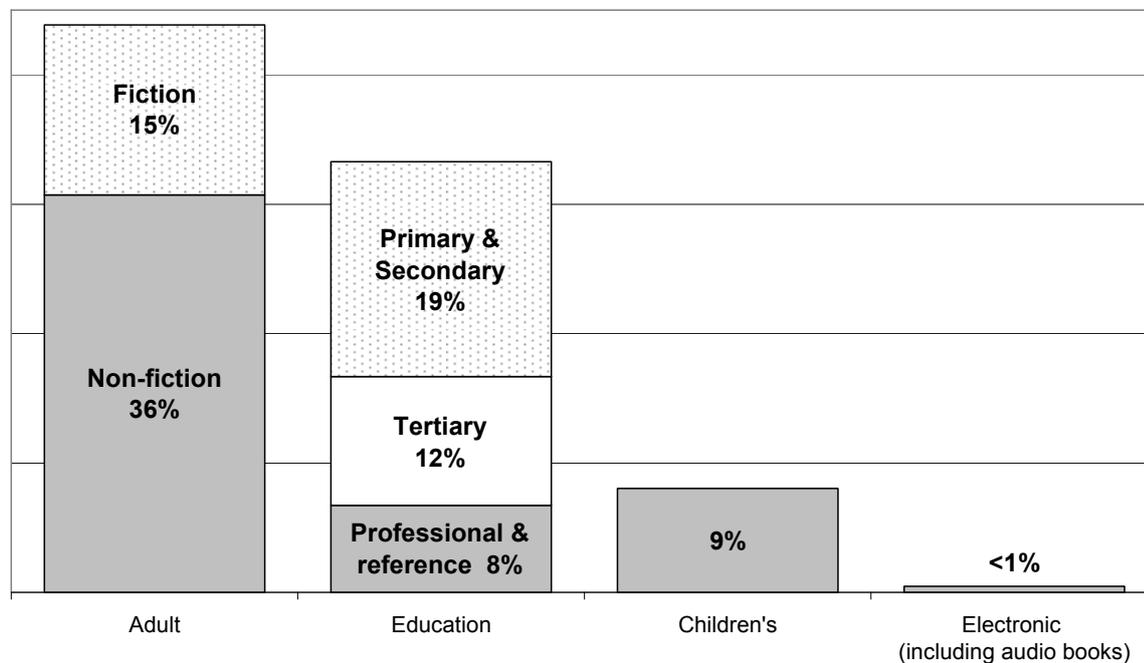
- a 2008 Starcom online survey (undertaken for the Australia Council for the Arts) of the reading and buying behaviour of 1200 readers aged between 16 and 65 years
- the 2008 Think Australian survey (produced by Booksellers+Publishers magazine) covering various aspects of book purchasing and production.

In addition, submissions included a range of anecdotal information which has helped to verify and augment the information contained in these larger data sets.

### Interpretation issues

There are several important interpretation issues that can confuse discussion about the 'local' component of the books market and, ultimately, the benefits and costs of the Parallel Import Restrictions (PIRs). In particular, sometimes it is implied that 'Australian published works' or 'new Australian titles' refer only to 'Australian-authored works' (itself subject to various definitions). To the contrary, the ABS define Australian published works to include both locally and foreign-authored works, and books which are printed both here and off-shore. Hence, for some Australian published works — those by foreign authors which are also printed overseas — the Australian input may be very small. Drawing on the Nielsen BookScan database and other information sources, the Commission has delineated more precisely between some of these categories (see appendix E).

Figure 2.1 **Sales of books to consumers by category of book, 2003-04<sup>a b</sup>**  
(per cent of total value)



<sup>a</sup> Includes sales by both book retailers and publishers direct to consumers. Books purchased by consumers directly from overseas suppliers (including online retailers and mail order) are not included. <sup>b</sup> For the sub-categories within the figure, the ABS only provided a breakdown for sales made to consumers by Australian publishers. This breakdown was used as an approximation for the proportion of sales by category for all sales.

Data source: ABS (*Book Publishers, Australia, 2003-04*, Cat. no. 1363.0).

The remaining 60 per cent of the market comprises trade book sales, which in turn is divided between adult trade books (51 per cent) and children's trade books (9 per cent). While much media attention is devoted to fiction writing (including genres such as science fiction, romance and mystery), around three-quarters of trade books sold are non-fiction books (including autobiographies, history, gardening and cooking books).

Trade books, in contrast to educational texts, are generally considered to be a final 'consumption item', purchased primarily for enjoyment. Hence, consumers' demand for individual trade titles is likely to be more responsive to price than their demand for education books.

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## The total market

Given the dated nature of the ABS statistics, the Commission looked for other indicators of the size of the Australian books market. These indicators suggest that the total market is currently in the order of around \$2.5 billion a year. Specifically:

- Using the BookScan data, the Commission estimates that, in 2007-08, sales by Australian trade book retailers exceeded \$1300 million (of which more than two-fifths, by value, were locally published). Application of the 60:40 ratio of trade to educational books<sup>1</sup>, and adding in ‘uplifts’ for books sold by local and overseas online retailers and by publishers direct to libraries, educational institutions and book groups (see later), suggests a total market of around \$2.5 billion.
- The survey of Australian book publishers undertaken by the University of Melbourne suggests that the total output of the publishing sector in 2007 was between \$1.7 and \$2.0 billion (Lee, Davis and Thompson 2009). Netting out export sales and sales of rights to foreign publishers, and adding in the uplift for online sales and books directly imported by retailers as well as a retail margin for sales made through booksellers, an estimate of well over \$2 billion would result.
- Total household expenditure in the year ended June 2008 was around \$630 billion (ABS 2008b). If households are still spending the same proportion of their income on books as in 2003-04 — around 0.4 of one per cent — the implied total market would be some \$2.5 billion.

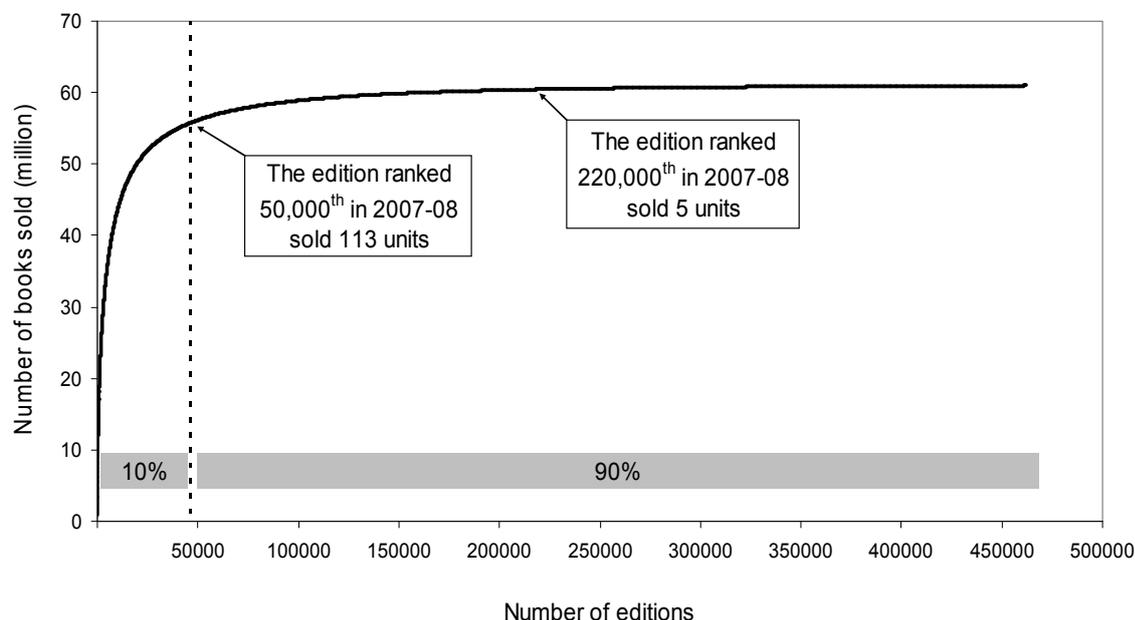
## Some characteristics of book sales

As in other countries, a relatively small number of titles account for the lion’s share of total trade book sales in any given year, with the vast majority of titles selling in very low volumes. Specifically, the bottom 90 per cent of the 460 000 trade editions sold in Australia (as captured by The Nielsen Company’s BookScan database) in 2007-08 had individual volumes of 113 units or less, with the bottom 50 per cent selling 5 units or less (figure 2.2). (That is not to say that editions ranked low in the sales distribution in 2007-08 did not rank higher in previous years.)

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<sup>1</sup> While professional and reference books are classed as educational books, some of these books (and, indeed, some textbooks) may be sold by trade retailers and captured in the Nielsen BookScan figures for the trade sector. The Commission has not sought to adjust its estimate to account for any such distortion.

**Figure 2.2 Cumulative volume of trade book sales by title, 2007-08<sup>a b</sup>**



<sup>a</sup> The cumulative volume of trade books sold in 2007-08 (as captured by BookScan), by the number of editions in descending order of sales volume. Around 15 per cent of all editions sold in 2007-08 were also released in Australia that year. <sup>b</sup> The Nielsen Company's BookScan database accounts for around 90 per cent of all retail trade sales in Australia.

*Data source:* The Nielsen Company's BookScan database, unpublished data.

For many trade titles, a major share of an edition's sales are made in the year following publication, although an analysis of BookScan data confirms that the front list/back list sales split of titles can vary significantly.<sup>2</sup> Sometimes, a rise in a

<sup>2</sup> Using the Nielsen Company's BookScan database, the Commission traced the sales of a random sample of 1000 editions of titles, released in Australia in 2003, over the five year period ending in 2008. Two thirds of the sample were 'first editions'. The sales achieved by first editions in the year following publication, as a share of their first five years sales, were 64 per cent. The equivalent figure for second and subsequent editions was 62 per cent. Since this analysis was limited by the five year timeframe over which data was available, the actual proportion of the editions' lifetime sales in the first year of publication may be lower than implied by the above estimate. However, for nearly three quarters of all editions tracked, sales had ceased or fallen to less than 10 units per year by the fifth year.

The results appear to be broadly consistent with data on the overall importance of front list sales — suggesting that on average they account for more than half of total sales revenue — submitted by a number of major trade publishers (see, for example, subs. 212, DR360, DR480, DR550).

When the editions (first or subsequent) are ranked according to the share of their total sales made as front list titles, the top quartile of editions achieved at least 83 per cent of their sales in the first year of the five, whereas the bottom quartile of editions achieved 46 per cent or less of their sales in the first year of the five.

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title's sales can occur years after its release when, for instance: a previously published author is 'discovered'; a new title in a series is released; a film version of a book is made; or the book is short-listed for or awarded a prize. For some trade titles, the sales pattern may be better described as a 'long slow fuse' with constant or growing sales over a number of years. Some of these slow burners may become 'classics' (such as *Possum Magic*), appealing to several generations of readers.

The sales pattern of primary, secondary and tertiary education books tends to follow a cycle over a number of years, dependent somewhat on the rate at which school and university curricula are changed or updated. According to Cengage Learning Australia (sub. DR282), in the initial year after publication, there may be a staggered adoption of the text as teachers and lecturers 'tyre-kick' the book before they formally adopt it. Once a book is adopted, it may be prescribed for a course over the subsequent three to four years (or longer). Cengage noted that, over the past decade, 30 per cent of its secondary and tertiary titles' total sales have on average occurred in the first year following the release of a title, although the actual figure for any one title may vary from 10 per cent to 40 per cent.

### **Book reading and purchasing habits**

Reading is a popular activity in Australia. A recent national phone survey of some 1000 adult Australians found that 84 per cent enjoy reading books (Australia Council 2008c). Starcom (2009) similarly reported that more than 80 per cent of participants in an online survey listed 'enjoyment' as a motivation for reading in their leisure time, with other motivations including reading for relaxation, for general interest and to improve knowledge. As a leisure activity, reading competes for people's time with other activities such as television, radio, the internet, cinema and physical pastimes. Of course, Australians read not only during their leisure time, but also at school and work, where less discretion is involved.

Some additional perspectives on reading behaviour emerged from a recent survey by the ABS (2008a), which found that around half of the population aged 15 years and over read books at least once a week. The survey further found that women are more avid readers than men; and that persons aged over 45 years and those with a university degree or higher qualification are more likely to read books frequently. A large number of children also read frequently — with the ABS reporting that around 80 per cent of girls and 70 per cent of boys aged 5–14 years read for pleasure outside of school hours.

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For trade books, consumers' purchasing decisions are influenced by both price and factors that provide an indication of the content and quality of a particular book, including: an author's reputation; book reviews; bestseller lists; inclusion on book clubs' lists; store displays; and prizes and awards. Starcom (2009) found that previous experience with an author, a book's reputation and price are the most influential factors.<sup>3</sup>

The factors influencing purchasing decisions for educational books are very different, with publishers typically seeking to market these books to educational providers rather than the ultimate consumer. In the tertiary market, Cengage Learning Australia (sub. 52, p. 8) noted that publishers '... travel to each tertiary institution and visit lecturers and course administrators at their worksite to secure book adoptions'. In deciding whether to adopt a particular title, lecturers and teachers may consider, among other things, the quality of the text and supporting material as well as the extent of local content. In the case of primary and secondary education, the titles prescribed or recommended by teachers are influenced by requirements in national and state teaching curricula. While price may be a factor in the adoption decision of lecturers and teachers, they may be less sensitive to price relative to their students. Indeed, at the Commission's Melbourne Roundtable, Bryan Lukas (head of the Department of Marketing at the University of Melbourne, and also a lecturer and educational author) indicated that:

When choosing which textbooks to prescribe for university courses, there can be a trade-off between the educational value of a book and the price of a book to the student. Some university educators focus almost solely, or strongly, on the educational value of the book as they assess it and do not give much weight to the price of the book to the student, whereas others, although fewer, may give the latter consideration more weight. (pers. comm., 4 May 2009)

As students have little discretion over whether to obtain prescribed educational books, they generally have to take the retail price of new texts, or access the material through alternative sources such as second-hand markets and libraries.

As mentioned, in 2003-04, on average, households spent around 0.4 of one per cent of their income on books (ABS 2006). Notably, this percentage differed little between higher and lower income households. Moreover, while lower income households spend less in absolute terms on new books, there is some evidence suggesting that these households do not read any less (Australia Council 2008c). It

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<sup>3</sup> There is mixed evidence on the overall price elasticity of books. While some overseas studies suggest that the demand for books is relatively unresponsive to price (see, for example, Fishwick and Fitzsimons 1998), others have found that the demand for books is price sensitive (see Hjorth-Andersen 2000, Ringstad and Løyland 2006). In Australia, 40 per cent of respondents to the Starcom survey (2009) indicated that price is a barrier to reading more frequently.

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is likely that these households have a relatively high propensity to borrow books from libraries or friends and family, or to purchase second-hand books. Thus, for example, the ABS (2007) found that individuals not in full time work, as well as young women and older Australians, tend to patronise libraries more frequently than others.

Libraries themselves are also large purchasers of new books. In 2005-06, there were around 1500 public libraries (including 83 mobile services) in Australia, which collectively held around 40 million books and related material (Public Library Services 2007). Just under half of these holdings were purchased in the previous five years. Public libraries spent \$100 million on new library materials (excluding electronic resources) in 2005-06.

## **2.2 Supply of books**

### **Bookstores**

Though Australian consumers obtain books from a number of sources, the large majority of new books are purchased from local book retailers.

Retail bookselling chains (such as Angus & Robertson, Dymocks, and University Co-op) and independent booksellers dominate the market. An ABS survey indicated that, in 2003-04, more than 500 such outlets accounted for nearly 80 per cent by value, and nearly 70 per cent by volume, of new book sales. Similarly, the more recent Think Australian (2008) survey suggested that retail chains now command around 55 per cent, and independent booksellers around 20 per cent, of the market.

The market share held by independent booksellers in Australia is around double that in the United States (US) and, according to Think Australian (2008, p. 5), has ‘... partly been preserved by their joining together in buying groups, the largest of which is Leading Edge Books, and also partly by the chains’ focus on a narrow range of bestselling titles ...’. In addition, a number of independent book retailers indicated that they are leaders in product knowledge and offer expert advice and service to customers (see, for example, Abbey’s Bookshops, sub. DR449 and MacLean’s Booksellers, sub. DR438).

Discount department stores (DDSs) account for most of the balance of sales made through bricks and mortar outlets. The DDSs focus on stocking the more popular bestselling titles and selling them at a substantial discount to the recommended retail price. While book retailers sell a mix of front list and back list titles, DDSs

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tend to sell a relatively high share of front list titles — that share being 80 per cent in the case of Big W (Coalition for Cheaper Books, sub. DR509, p. 15).

Consumers also purchase books from smaller non-specialist retailers, such as newsagencies and airport retailers. However, these retailers only account for a small share of the overall market (ABS 2005b).

Reflecting in part the current restrictions on the parallel importation of books (see chapter 3), book retailers source the large majority (91 per cent in 2003-04) of their books from local publishers (ABS 2005b) — though in some cases local publishers are acting solely as distributors for overseas publishers.

### **Online sources**

While almost two thirds of Australian households have access to the internet, the Coalition for Cheaper Books (sub. 218, p. 1) indicated that online sales are now ‘upwards of \$100 million per year’, which would represent about 5 per cent of the Commission’s estimate of the total value of the books market.

Several participants contended that various factors will continue to limit that share in the future. The Australian Publishers Association, for instance, said that Amazon’s business is relatively heavily concentrated in low volume titles which account for a small proportion of the overall market. Along with some other participants, it also commented on the ‘additional’ costs of purchasing through Amazon, claiming that this will further constrain future purchasing volumes through this route.

To order from Amazon presents costs to Australian readers above and beyond the stated retail price of the book, including freight costs and delays, and requires faith that the book will arrive in an adequate edition, and in good condition. (Australian Publishers Association, sub. 244, p. 34)

However, as internet penetration increases, internet speeds improve and people become more comfortable with online purchasing, the market share of online bookstores is likely to grow. Indeed, the number of local online bookstores is increasing. As Wilkins (2008, p. 151) observes:

Both Dymocks and Angus & Robertson have relaunched their online stores, and other pure-play web businesses such as The Nile, Booktopia and Boomerang Books are joining them.

Notably, in the major overseas markets, the presence of significant local internet book sellers has translated into a much higher and growing online market share. For example, in 2007, internet sales in the United Kingdom (UK) were estimated to

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account for 13 per cent by volume and 16 per cent by value of the total market, an increase of about 7 percentage points from 2004 (BA 2008). Similarly, in the US, online sales are estimated to account for as much as 22 per cent of all book purchases (Simba Information 2008).

### **Alternative sources**

Libraries, and especially public libraries, play an important role in making books available to the community. In 2005-06, around one-third of the population aged 15 years and over visited a national, state or local library at least once (ABS 2007). Also, individuals who visit libraries tend to do so quite frequently — of those who visited a public library in 2005-06, nearly two in three visited six or more times during the year, and many visited once a fortnight or more. Reflecting such multiple use, public libraries loaned out an average of nearly 9 books per capita in that year (Public Library Services 2007).

As noted, books are also disseminated informally through family and friends. And though the ABS (2005b) estimated that the value of sales of second-hand books was less than 1 per cent of the sales value of new books, given much cheaper prices, the proportion in terms of volume would have been somewhat higher.

Finally, in the education market, many primary and secondary texts are purchased by schools, which in turn provide them to students. Schools also act as conduits for sales of second-hand text books by parents and students. Second-hand text book sales also thrive in the tertiary sector, facilitated in part by campus bookshops.

## **2.3 Producing a book in Australia**

Many parties are involved in producing books and distributing them to retailers, including authors, publishers, printers and literary agents. Governments also play an indirect supporting role through, amongst other things, providing direct funding to authors and publishers and by legislating copyright laws (chapter 3).

### **Authors**

Authors are the creators of original literary works embodied in books. Some Australian authors are well-known players on the international stage and a significant number of their less widely recognised colleagues are nonetheless published in a variety of countries around the world. Then there are the many established and emerging authors whose readership is almost solely in Australia.

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However, getting a precise fix on the number of Australian authors and whether they are full time or part time writers is difficult.

- In the 2006 census, some 2600 individuals nominated ‘author’ as their ‘main job’ (ABS 2008c).
- The Australian Society of Authors represents around 3000 writers and illustrators ‘across Australia’ (sub. 70, p. 1).
- Throsby and Hollister (2003) estimated that, in 2001, there were 7300 ‘professional writers’ (including book and script editors) in Australia, of which 3700 spent more than half of their time working as writers.
- Based on the authorship of manuscripts submitted to publishers and other evidence, there are many more Australians who write books on an occasional basis, or who aspire to do so, but for whom authorship is not a full time (or life time) occupation. In this regard, the Australian Society of Authors (sub. 70, p. 1) said that Public Lending Rights Committee estimates suggest there are more than 10 000 people working as writers or illustrators in Australia.

Getting a precise estimate on the number and value of locally authored books sold in Australia is similarly difficult. Most of the publicly available data relates to sales of books ‘originated’ in Australia by Australian publishers. However, these titles include books written by authors resident in both Australia and overseas.

As elaborated on in appendix E, estimates by the Commission, using the Nielsen BookScan database and other sources, suggest that, in 2007-08, locally authored works accounted for around one-third of sales (on both a volume and value basis) of all trade titles.

Although equivalent figures for educational titles are not available, the majority of schoolbooks sold in Australia would be locally authored, given the need to meet local curriculum requirements. John Wiley & Sons, for example, advised the Commission that none of its schoolbooks are imported or adapted from overseas editions (pers. comm., 5 June 2009). In relation to tertiary texts, Cengage Learning Australia estimated that around half of publishers’ portfolios comprise imported books, and that the remainder include adaptations of overseas versions, suggesting a much lower share of Australian-authorship than for schoolbooks. John Wiley & Sons noted that one third of its tertiary titles are imported, and that around half of those published here are adapted from foreign editions. It estimated that its adaptations can have from 20 to 60 per cent local author involvement when first released, with the share potentially increasing for updates of the books (pers. comm., 5 June 2009).

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### *Returns from writing*

There is considerable disparity in the earnings of Australian authors. In 2006, nearly 30 per cent of the 2600 individuals who nominated ‘author’ as their main job reported income from all sources (including income from activities unrelated to writing) of less than \$400 per week. Conversely, one third reported income of \$1000 or more per week (ABS 2008c) — significantly higher than the comparable share of one fifth for all employed persons (ABS 2009).

The proportion of authors’ total incomes derived directly from their creative writing efforts is similarly variable — though, on average, it appears to be quite small. Thus, for example, Throsby and Hollister (2003) found that, in 2000-01, ‘creative income’ accounted for only 14 per cent of the collective (median) income of the estimated 7300 ‘professional writers’. This is despite the fact that authors can potentially derive creative income from a number of sources including:

- advances by publishers on royalties for unpublished books
- royalties (or fees) paid to authors (over and above any advances) for sales either in Australia or overseas:
  - domestic royalties are generally set as a fixed percentage of the recommended retail price (RRP). In 2003-04, royalties for sales in Australia were around 11 per cent of the RRP (ABS 2005a) — though the figure that is now commonly quoted for these sales is 10 per cent
  - royalties to authors tend to be set lower for the sale of books outside of Australia — and are often based on the actual sale price of books (which is typically lower than the RRP). Thus, Garth Nix (sub. 102, p. 6) reported that such export royalties could be as low as 2–4 per cent of the RRP(royalties are not generally payable to the local author on any remaindered copies)
- payments under the Public Lending Right and Educational Lending Right programs (see chapter 3)
- payments from Copyright Agency Limited (CAL), which is the Australian statutory copyright collecting agency that manages the statutory right to reproduce the works of creators and publishers<sup>4</sup>
- book adaptations, including film and play adaptations
- grants, prizes and fellowships, from both government and private sector sources (see chapter 3).

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<sup>4</sup> In 2007-08, CAL distributed around \$40 million to its members, including authors and publishers, for material copied from books (CAL 2008).

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In addition to the royalties (and related income) that authors receive from book sales, the non-pecuniary rewards that many derive from writing — such as the opportunity to influence the views of others, and the ‘joy of self-expression’ (Abbing 2002) — are widely acknowledged to be significant.

### *Use of literary agents and editors*

While estimates of the proportion of Australian authors represented by literary agents vary between one quarter (Throsby and Hollister 2003) and one half (Westland 2006), it seems likely that usage is concentrated in the smaller sub-group of full time authors.

According to the Australian Literary Agents’ Association (ALAA, sub. 124, p. 2), literary agents ‘work to protect, manage and optimise an author’s copyright. They license the work of authors they represent and ensure that authors get a fair payment for all rights.’ Amongst other things, this may involve: assisting authors to prepare manuscripts for publication; advising them on which publishing house(s) to submit work to; negotiating contracts with those who use their works; and managing the sale of additional rights. By sorting out the highest quality manuscripts, literary agents may also perform an ‘assessor’ role for publishers. The ALAA said that the income of agents is derived solely on a commission basis from the sales they help to secure on behalf of their clients.

Authors may also employ editors to assist in the preparation of manuscripts — though for the most part this function is performed by publishers (see below) and sometimes by literary agents.

## **Publishers**

Australian book publishers are comprised of a diverse group of entities, ranging from businesses publishing over one hundred titles annually in Australia to self-publishers who may only ever publish one title. As such, estimates of the number of book publishers vary depending on how ‘publishers’ are defined:

- Counting all entities that published one or more titles in a year, there are currently around 4000 book publishers in Australia (Think Australian 2008). Most are self-publishers or very small entities releasing only a handful of titles each year.
- If publishers are defined to include all entities that describe themselves as a publisher and nominate publishing as their main activity (regardless of their actual level of publishing output), Lee, Davis and Thompson (2009) estimate that there around 1000 publishers in Australia.

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- Limiting the definition to only those entities publishing more than five titles in a year, there are around 280 book publishers in Australia (Think Australian 2008). (By way of comparison, the ABS estimated that, in 2003-04, there were around 230 businesses whose main function was publishing (ABS 2005a).)

The University of Melbourne study estimated that the total sales revenue of Australian publishers was between \$1.7 billion and \$2.0 billion in 2007.<sup>5</sup> This is 28.5 per cent higher than the value of output at the time of the last ABS survey in 2003-04, which was estimated to imply an annual average growth rate of approximately 6.5 per cent (Lee, Davis and Thompson 2009).

Most of this income comes from domestic sales of what are commonly referred to as Australian ‘originated’ titles — noting that these comprise both locally and foreign-authored books. In addition, local publishers derive revenue from the importation and distribution of books published overseas, from the sale of rights for Australian works to overseas publishers and from the export of locally published books. Although estimates will vary with the definition of the local publishing sector (see above), the Australian Publishers Association (sub. 244) indicated that direct employment in the sector is around 5000, a quarter of whom are part time or casual.

### *The role of publishers*

In the process of acquiring and publishing manuscripts from foreign and Australian authors (and distributing books published overseas), publishers perform several roles. Specifically, they:

- collaborate with authors and their literary agents on proposed manuscripts and, especially in relation to the educational and professional market, commission authors to write manuscripts to meet an identified market need
- provide editorial support to authors. As well as enhancing the saleability of a particular work, this process may also help develop the skills of authors, with benefits for the quality of subsequent manuscripts
- organise designers, coordinate any input from illustrators and arrange for the printing and distribution of books
- stimulate demand for books, by organising promotional events such as author signings, radio interviews, attendance at literary festivals and the like

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<sup>5</sup> Using a range of estimates of the market share held by the top 20 publishers (based on earlier ABS data), Lee, Davis and Thompson (2009) extrapolated the revenue of the ‘top 20’ publishers in their 2007 survey to infer the total revenue for all publishers that year.

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- sometimes pay authors an advance on royalties for yet-to-be published books
  - provide books to booksellers on a ‘sale or return’ basis, effectively acting as a banker for the industry. In 2000, just over half of all books distributed to booksellers were supplied on this basis, with around 13 per cent returned (Accenture 2001); however, the Australian Publishers Association (sub. 244, p. 20) indicated that this arrangement now applies to most new books and much of the back list.

Central to publishers’ commercial success are the strategies they adopt in relation to the type and range of manuscripts acquired and to the release and pricing of books.

The likely success of titles can be difficult to predict prior to release, especially for books by less well established authors. Hence, larger publishers typically release a ‘portfolio’ of titles, with returns from the better sellers helping to cover losses on titles which do not generate significant sales. For instance, Random House Australia (sub. 193, p. 8), indicated that the top 1 per cent of its titles generated 10 per cent of its sales revenue in 2008, with the top 7 per cent accounting for 40 per cent of total revenue. More starkly, the Australian Publishers Association said that:

For every 10 titles published, on average two succeed, by meeting or exceeding expectations, a further three may cover costs with a small margin, and the other five fail to find a market and end up being published at a loss. (sub. 244, pp. 36–7)

The portfolio approach also allows publishers to take risks with emerging authors on the expectation that likely losses in the short term will be offset in the future as at least some of these authors become established and commercially successful.

In regard to the release and pricing of books, a common strategy is to initially publish a book as a large ‘C format’ trade paperback (or hardback) and to later re-release it in a smaller paperback format at a lower price. This release sequence allows publishers to target consumers with varying sensitivity to price. Publishers also typically organise the release or re-release of books to coincide with peak demand periods (such as Christmas, Mothers Day and Fathers Day).

### *Types of publishers*

Commercial publishing businesses in Australia specialising in trade books can be grouped into two categories:

- local arms of multinational publishers. These businesses are generally large, are able to attract and retain established authors and publish a diverse portfolio of titles. Examples include Penguin, Hachette, Random House and Harper Collins

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- Australian publishers. The largest local publisher, Allen and Unwin, commands a reasonable market share and publishes a diverse portfolio of titles. In contrast, small to mid-size local publishers (such as Scribe and Black Ink) tend to specialise in a small number of genres — which, in some cases, are considered too ‘risky’ by the large publishers — and may maintain particularly close ties with independent booksellers.

There is less contemporary sector-wide data on the activities of those publishers concentrating mainly or exclusively on educational, professional and reference books. However, in 2003-04, the ABS estimated that around 45 per cent of publishing businesses specialised in this part of the market (ABS 2005a) — broadly in line with the commonly accepted 60:40 delineation of the overall market between trade and educational/professional books.

More specifically, Cengage Learning Australia (sub. 52, p. 5) provided a variety of information on publishers of educational texts. Amongst other things it noted that:

- There are 8 local arms of multinational publishers and more than 20 Australian publishers supplying educational books to booksellers and educational institutions.
- More than half of sales in the primary sector are of books aimed at improving literacy.
- In the secondary and tertiary segments of the market, publishers provide a range of add-on services (see section 2.1).
- In the tertiary sector, as noted, publishers’ portfolios comprise around 50 per cent of locally originated titles or adaptations of overseas versions. The remainder are imported books, principally from the UK, the US and Asia.

On a revenue basis, Australian book publishing is highly concentrated. Commission estimates based on Nielsen BookScan data indicate that around 60 per cent of the total revenue from trade book sales in 2007-08 accrued to titles published by the top 10 publishers and thereby mainly to titles released by multinational publishers. Even so, many smaller local publishing houses are operating successfully in the domestic market, as well as having a significant export business.

### *Sales and distribution channels*

While publishers supply the bulk of their books to booksellers, they also sell to schools, universities, libraries and book clubs. The ABS (2005a) estimated that, in 2003-04, such ‘direct’ sales accounted for more than 15 per cent of publishers’ total revenue from sales in Australia.

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A number of larger publishers have their own distribution systems. Some (including Penguin Books and Random House) also act as distributors for smaller publishers. These distribution arrangements are in contrast to those in the UK and the US, where distribution is mainly undertaken by specialist wholesalers.

A number of Australian publishers also export books to other English language markets, including New Zealand, the UK and the US. Many publishers (and literary agents) are also actively involved in ‘foreign rights’ trading. For example, where an Australian author licenses the ‘world rights’ for their book to an Australian publisher, the right to publish in an overseas country can in turn be assigned to an entity in that country. In value terms, the leading markets for the export of rights are the UK and the US (Think Australian 2008). However, the majority of rights deals (61 per cent in 2008) are made with publishers in non-English speaking countries (most notably Germany).

The Australian Publishers Association (sub. 244, p. 18) said that the sale of foreign rights and book exports now generate revenue for local publishers of around \$220 million a year, or some 12 per cent of their total revenues. Indeed, several small- to mid-size Australian publishers established over the last decade or so have based their business model on trading rights — that is, selling Australian rights overseas and acquiring rights to publish foreign titles in Australia (Text Publishing sub. 63).

## Printers

A significant proportion of the books published in Australia are also printed here. And, while estimates differ somewhat, it appears that the book printing industry generates more than \$250 million a year in revenue and employs some 2000 people directly.<sup>6</sup> The industry also provides significant sales for supplier industries such as paper manufacturers and ink suppliers.

While there are more than 200 book printers dispersed across Australia, the two most prominent firms, Griffin Press in Adelaide and McPherson’s Printing Division based in Melbourne (but with a major production plant in the Victorian country town of Maryborough), account for more than 40 per cent of total direct revenue earned by the industry. The Printing Industries Association of Australia (PIAA, sub. 106) further estimated that, in Maryborough, a quarter of the workforce is

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<sup>6</sup> The Victorian Government (sub. 270) suggested that, collectively, book printers earn \$250 million a year in revenue. Ligare (sub. 76) and the PIAA (sub. 106) estimated that the total book printing market is worth between \$250 and \$300 million per annum.

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either directly employed in the industry or dependent on it. The other significant printer is Ligare, based in Sydney.

The economics of the Australian book printing industry was recently explored at length by the ACCC (2007). That report and other information (Accenture 2001 and PIAA, sub. 106) indicates that:

- Offshore mono printing — soft and hardcover books printed in one colour with a full colour cover — is somewhat cheaper than in Australia. However, shipping costs and the ability of local printers to deliver books quickly and in smaller print runs provide offsetting incentives for publishers to print mono books in Australia. The capacity for timely turnaround is particularly important for many trade titles which are generally printed in mono form.
- The domination of the market by Griffin and McPherson’s reflects the fact that they are the only printers in Australia to operate high speed fixed-format web-fed presses. For longer print runs of mono books, this technology is a prerequisite to compete with overseas printers.
- Australian book printers are less price competitive with Asian printers in the market for colour books, which tends to be more prevalent in the children’s and educational market segments.

It is also important to note that technological developments have affected the printing industry and will continue to do so in the future. In this regard, the PIAA said that these developments:

... including the proliferation of the internet and the increasing tendency to purchase books online coupled with the release of electronic devices such as ebooks, as well as plans to produce electronic versions of printed textbooks all pose serious competitive challenges for the Australian book printing industry. (sub. 106, p. 13)

The Association further observed that print-on-demand technology is starting to blur the distinction between printers and booksellers and is likely in the future to displace some traditional printing activity.



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## 3 Copyright law and the broader policy environment

### Key Points

- The primary objective of copyright law is to balance incentives to create new works against the costs of restricting access to copyright material.
  - Authors and publishers are protected against ‘unauthorised’ publication and reproduction of their works.
  - Copyright provides the basis for the trade in ‘rights’ of copyright material.
- There is a general prohibition on the parallel importation of books into Australia.
  - However, booksellers can parallel import books that do not comply with the 30 day release and 90 day resupply rules.
  - Booksellers can parallel import books to fill a single customer order.
  - Customers can import books directly for personal use.
- In addition to legislative protections, the Australian Government supports the books sector in other ways.
  - It provides direct financial assistance through grants, literary prizes and tax concessions for registered cultural organisations.
  - Demand for books is increased through literacy and reading programs.
- Copyright law, including the parallel import restrictions, sits within a broader policy framework germane to the specific issues raised in this study. Relevant broader policies include:
  - Those directed at promoting Australian cultural values (which underlie much of the direct financial assistance currently provided to the books sector).
  - Competition, trade and industry policies.

The provisions restricting the parallel importation of books that are the focus of this study are contained in the *Copyright Act 1968*. In this chapter, the Commission first outlines the relevant legal provisions and then discusses the objectives of both the Act and the Parallel Import Restrictions (PIRs). Other government policies and objectives that may bear on an assessment of the PIRs are discussed in the final section.

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## 3.1 Copyright Act provisions for books

### The core protections

The *Copyright Act 1968* protects the original expression of ideas in creative and intellectual activities, including literary, musical, dramatic and artistic works, as well as sound recordings, films, television and sound broadcasts and published editions. Copyright, like all intellectual property rights, is legally separated from physical property rights — a person who owns a physical copy of a book does not own the copyright material within the book. Unlike patents or trademarks, copyright protection applies automatically to the creators of original works — there is no requirement to register a copyright work prior to it being protected.

The Act guides the use and trade of copyright-protected works by granting copyright holders a number of ‘exclusive rights’, depending on the material being protected. The two main exclusive rights afforded copyright holders are:

- the ‘reproduction’ right, or right to make multiple copies of a work
- the ‘publication’ right, or right to make the work first available for sale.

These rights make copying and selling of copyright material without the permission of the author or publisher an infringement under the Act, except in some limited circumstances. Box 3.1 outlines some of the necessary conditions for copyright protection in Australia.

The right to control who may use their work gives authors and publishers the ability to trade their intellectual property — to allow others to use their work at a price that is mutually agreeable. In the case of books, publishers seek permission to use an author’s creative work in exchange for payment, usually as a royalty based on a percentage of the recommended retail price or sales revenue from a book. The publication of a work as a book is not the only right that authors have — they can allow the production of an electronic version of their work (such as e-books), as well as allow adaptations of their work, such as in a film or television series. Publishers make an assessment of the potential sales for a particular book, and this will influence the amount of money they will offer for the right to use an author’s creative output. Authors may place conditions on how their work may be used by the publisher.

Publishers pay for the exclusivity associated with being the only entity in a territory with the permission to produce a book containing an author’s work. In this way, publishers act as an intermediary between authors who wish to realise some financial value from their copyright, and consumers, who ultimately pay for, and consume, the work.

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## Box 3.1 Aspects of Australian copyright law applying to books

### Qualifying for copyright

Australian copyright law automatically protects literary works provided that:

- the original expression of ideas, as distinct from the original ideas themselves, has not been copied from another work
- the work has been written down in a material form using words or figures
- the work is connected with Australia by, for example
  - the author being an Australian citizen or a permanent resident in Australia at the time the work was made (for unpublished manuscripts), or
  - the book's edition being first published in Australia (for printed works).

The *Copyright Act 1968* grants protection to authors for a period of 70 years from the end of the year of their death, and protects publishers for 25 years from the end of the first year of publication.

### Types of copyright

A published book is protected by copyright in a number of ways. In the first instance, the author owns the copyright in the written material of the book — for example, the fictional story or the descriptive narration in a non-fiction work. However, the publisher also owns copyright in published editions separately from the author's copyright. The publisher's copyright may protect, for example, the selection and arrangement of material within a book including the title, font choices, page layouts and cover art. Illustrators may also own the copyright in any illustrations within the book.

### Moral rights

Since 2005, the Copyright Act has also granted several 'moral rights' to individual creators of copyright-protected material. These moral rights are indivisible and cannot be traded, sold or surrendered by the creator of a work. They include the rights:

- to ensure that the author of a work is clearly and prominently identified
- to prevent a person who is not the author from being identified as such
- to object to the doing of anything in relation to the work (such as altering, distorting or mutilating) that is prejudicial to the author's honour or reputation.

### International treaties

Australia is a party to several international agreements that require signatories to recognise the copyright-protected works from other signatory countries in the same way that they protect the copyright of their own nationals. Such international cooperation is essential to extend copyright protection beyond national borders. The main agreements signed by Australia concerning copyright law are the 1886 *Berne Convention for the Protection of Literary and Artistic Works* and the 1994 World Trade Organisation agreement on *Trade-Related Aspects of Intellectual Property Rights* (TRIPS).

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## The parallel import restrictions

The terms of reference do not request the Commission to undertake a wholesale review of Australia's copyright system, but rather to review the specific effects of the parallel importation laws for books.

Subject to certain conditions, Australian copyright law provides for an almost total ban on Australian retailers importing books from overseas if a version of the book has been published locally. Under the *Copyright Act 1968* (s.37), it is an infringement for an Australian bookseller to parallel import copies of a book to sell in Australia without the permission of the copyright holder, even if those copies have been legitimately published in another country.

However, in 1991, the Act was amended to permit Australian booksellers to parallel import one or more copies of a book without the permission of the Australian copyright holder if Australian publishers do not meet certain conditions.

### *The 30 day release rule*

Prior to 1991, publishers could buy the Australian rights to a foreign book and delay the release of the title indefinitely.

Now, under section 29(5) of the Copyright Act, the holder of Australian copyright for a new book has 30 days to supply copies of the book to the Australian market after its release in another market. If the copyright holder fails to meet this requirement, Australian booksellers become free to import non-infringing copies of the book from any overseas supplier. Australian publishers therefore have an incentive to release titles promptly to preserve the PIRs on their titles.

### *The 90 day resupply rule*

Section 44A contains the 90 day resupply rule, which places an onus on Australian publishers to maintain a supply of the books they publish to Australian booksellers. An Australian publisher forfeits parallel import protection over a publication if:

- a bookseller has requested the publisher to supply a book, but the publisher has not responded within 7 days advising they will supply the book within 90 days, or
- the publisher has not supplied the book to the bookseller within 90 days.

Under the current law, it is not clear whether a publisher loses parallel importation protection permanently if unable to supply a book within 90 days, or only until supply is restored. This lack of clarity continues partly due to the fact that there has been very little parallel importation through forfeiture of protection under the 90 day rule.

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### *Other situations*

The Act also sets out some other situations in which booksellers may parallel import books. For example, booksellers are able to parallel import a single copy of a book to satisfy a written customer order or to supply books to a library.

Also, the 1991 amendments to the general prohibition on parallel importation did not directly affect the pre-existing rights of consumers to purchase books for personal use from overseas.

## **3.2 The objectives of the copyright provisions**

In assessing the PIRs, the terms of reference ask the Commission to examine the extent to which they promote and achieve the objectives of the *Copyright Act 1968*, and to have regard to the intended objectives of the PIRs within the government's overall policy framework.

### **General objectives**

Unlike much contemporary legislation, the *Copyright Act 1968* does not explicitly state its objectives. Given the importance that copyright law has for Australia's intellectual output, the proper role and objectives of copyright law have long been discussed. And many submissions included views on how the objectives of the Copyright Act can be characterised (see box 3.2).

It is widely accepted that copyright law, like intellectual property law generally, aims to provide incentives for investment in creative works while achieving a balance between such creation and the diffusion of creative works through the community. Reflecting this view, the Ergas Committee stated:

Broadly speaking, 'intellectual property rights' is a generic term for the various rights accorded by law for the protection of creative effort or for the protection of economic investment in creative effort. In Australia, legislation grants limited exclusive rights to the owners of creative works, in order to encourage investment in innovation, as well as its diffusion throughout the economy. (IPCRC 2000, p. 22)

The pursuit of 'balance' in copyright law reflects the different incentives created by granting exclusive rights.

On the one hand, without any copyright protection, investment in creative work would decline. Copyright prevents those who have not contributed to the original investment in a work from 'free riding' — that is, benefiting from the work without paying for it. Most intellectual property can be easily copied or used at little cost without the knowledge or permission of the copyright holder. Authors and publishers

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invest in producing books, both directly and through forgone income-earning opportunities. Thus, without copyright protection, authors and publishers would find it more difficult to recoup the cost of their investment.

On the other hand, there is a social cost to granting authors and publishers the exclusive right to exploit their work. Such exclusive rights enable copyright holders to restrict the diffusion of their work in order to raise its price and thereby increase private profits. This reduces the dissemination of the ideas embodied in the work, and thus the associated benefits to society. Thus, in return for guaranteeing a specific degree of protection to rights holders, society balances these rights against other social goals.

Specifically, the copyright legislation seeks to balance these competing considerations in two key ways:

- by only protecting the particular expression of the ideas or facts, not the ideas or facts themselves
- by limiting the time that copyright holders enjoy exclusive rights, after which the work passes into the public domain.

In its submission, the Australian Copyright Council (sub. 249, p. 3) stated that, while an incentive to produce and invest in new works is an important objective of copyright, it is also intended to reward creators of works that provide education and enjoyment to others, whatever their motivation for producing those works. In this context, it pointed among other things to the report of the 1959 Spicer Committee — that preceded passage of the current Copyright Act — and stated (in part):

The primary end of [copyright law] is to give the author of a creative work his just reward for the benefit he has bestowed on the community and also to encourage the making of further creative works. (CLRC 1959, pp. 8–9)

The concept of ‘just reward’ is of course difficult to define. In one sense, the concept is arguably encompassed in the balance that copyright aims to achieve between incentives to create new copyright material on the one hand, and the benefits to users on the other. However, another interpretation might be that the Act should enable publishers and authors to earn at least some minimum financial return from their works. The Act, by enabling publishers and authors to trade their work, certainly does enable them to obtain a greater financial return for it — indeed, this is the key way in which the Act provides an ‘incentive’ for investment in creative works. But the magnitude of that return is dependent on the willingness of others to pay for the work in the market place. Hence, like other property rights, copyright law does not seek to ensure that rights holders obtain any particular return for their rights; nor would it be well suited to doing so. Other government measures, available to Australians of all vocations, exist to address distributional matters.

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### Box 3.2 Participants' views on the objectives of copyright and PIRs

Participants presented a number of different 'takes' on the objectives of copyright law:

We believe that the 'high objective' of copyright law is to optimise innovation and creation, and at the same time, to ensure that works are available to use and access for the public interest. Because of this, we see that copyright policy is about creating a balance between adequate access to materials on the one hand, and adequate incentives to create those materials on the other. (Australian Digital Alliance, the Australian Libraries Copyright Committee and the Australian Libraries and Information Association, sub. 252, p. 4)

The Copyright Act does not spell out its objectives, although they can be inferred: they are intended to provide copyright holders with automatic and exclusive moral, commercial, and territorial rights to the fruits of their labour. (Scribe Publications, sub. 122, p. 2)

The objectives of the copyright act are to provide incentives for creativity, for people to produce new works, which in turn benefit society as a whole. The current provisions in the Copyright Act achieve this basic objective. In addition they achieve the higher objective of copyright, which is the promotion and the expansion of knowledge, as books from various countries are vigorously traded to other countries. (Australian Literary Agent's Association, sub. 124, p. 5)

The Copyright Act provides for the recognition of the rights of creators of artistic works. The implicit intention may be taken as that of fostering, promoting and rewarding creativity in artistic works. (Margaret McKenzie, sub. 211, p. 1)

The existing rules provide the essential balance as required by the Copyright Act between the various property interests of creators, including commercial protection of their work, and the public interest in ensuring equity of access to this material. (Ann Cunningham, sub. 233, p. 1)

Participants also had differing perspectives on the aim of PIRs, and the 1991 changes:

Territorial copyright means that the contracts that creators enter into under the terms of copyright are in tune with the law. Territorial copyright can therefore be justified as a means to enforce the inherent right of copyright that attaches to creative effort. The Copyright Act cannot fulfil its objectives in the absence of territorial copyright because without it copyright holders cannot enforce the contracts they license. (Text Publishing, sub. 63, p. 10)

The current rules were introduced in 1991 to overcome the post-colonial problem whereby United Kingdom (UK) and United States of America (USA) publishers divided the English-language book market between them. Australian rights were often assigned with UK rights, and this meant that many USA books did not become available in Australia until the UK publishers produced their edition, for which they also usually held Commonwealth rights. (Australian Society of Authors, sub. 70, p. 2)

The purpose of the 1991 copyright amendments was not to limit competition, but to balance the benefits conferred by copyright on authors with the needs of consumers. (Australian Publishers Association, sub. 244, p. 3)

The 1991 amendments were principally intended to provide a greater range of available titles, but were also intended to encourage the early availability of paperback versions (which are cheaper than hardback versions). (Australian Copyright Council, sub. 249, p. 4)

*Printing Industries* hopes that this latest study ... will finally determine that the current arrangements which were introduced in 1991 ... are working as intended by protecting the interests of book readers and book purchasers as well as other stakeholders in the book production value chain ... (Printing Industries Association of Australia, sub. 106, p. 5)

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## Objectives of the parallel importation restrictions

Like the Copyright Act as a whole, the objectives of the PIRs are not explicitly detailed in the Act. However, the construction of the Act can help in gaining an understanding of those objectives.

The Australian PIRs are implemented as an extension of the publication and reproduction rights — that is, those who hold those rights in Australia can prevent the importation of overseas editions of a book. By adding to what the holder of the publication and reproduction rights can control, the PIRs thus potentially add to the value that those rights might have in the marketplace. The Australian Copyright Council noted this point in its submission, stating:

The parallel importation provisions are thus not an *additional* incentive, ... but rather a means of maintaining the incentive provided by the exclusive right of reproduction. (sub. 249, p. 4)

Author Garth Nix (sub. 102, p. 3) made the same point: ‘Restrictions against parallel importation are not “additional rights”’.

While Australia’s parallel importation restrictions may not technically amount to an additional right under copyright law, what is clear is that the ability to restrict parallel imports is separable from the underlying exclusive rights enjoyed by copyright holders.<sup>1</sup> In this context, neither the Berne Convention nor the TRIPS agreement require member states to prohibit or to allow parallel importation, and member states are free to choose for themselves their laws on parallel importation.

This has implications for how the merits of PIRs are assessed. For example, Text Publishing (see box 3.2) contended that PIRs are necessary because, without them, copyright holders could not in its view enforce the contracts they enter under the Copyright Act. However, one interpretation of this view is that legislation should be shaped to align with the (desired) practices of industry participants, rather than vice-versa. Because PIRs are separable from the core copyright protections, the issue for policy makers is whether any additional benefits that PIRs generate for the community, including the benefits for copyright holders, outweigh any costs they entail. One aspect of this assessment is the extent to which — and the conditions

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<sup>1</sup> Some responses to the discussion draft interpreted the Commission’s draft recommendation as applying to copyright in general, and were concerned that it would thus reduce copyright from the life of the author plus seventy years to only 12 months (see, for example, DR398, p. 1 and DR436, p. 1). To clarify, the draft recommendation related only to the period for which PIRs would apply to book titles, with no change to the period of protection afforded by the publication and reproduction rights. The recommendations in this report also apply only to the PIRs; they would not affect the length of copyright provided by the core restrictions in the Act.

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under which — the PIRs augment the value of other protections in the Act. This requires analysis; it cannot be determined solely from first principles.

In relation to the 1991 amendments to the general prohibition on parallel imports, the intended objective is more straightforward. The terms of reference state that ‘these changes were intended to address concerns about delays in obtaining copies of overseas books’. The reforms were designed to provide Australian publishers with a commercial incentive (namely, forfeiture of territorial protection and thus exposure to the threat of parallel imports) to undertake the timely and continuous supply of the titles they publish to the benefit of Australian book consumers. Chapter 5 discusses the outcomes of these reforms.

### **3.3 The broader policy environment**

The Government’s ‘overall policy framework’ mentioned in the terms of reference is not tightly defined. The reference indicates only that it includes ‘competition, intellectual property, trade and industry policies’. The Commission considers that other government policies, such as those relating to Australian arts and culture, are also potentially highly pertinent aspects of the overall policy framework.

#### **Competition, trade and industry policies**

Over the past 25 years, Australia’s industry policy has been characterised by broad-based initiatives designed to expose the economy to greater competitive pressures. Building on earlier initiatives to reduce border protection by abolishing quotas and reducing tariffs, wide-ranging reform programs including the National Competition Policy (NCP) and the more recent National Reform Agenda (NRA) aimed to extend competitive pressures to more parts of the Australian economy. Both the NCP and NRA were agreed to by all Australian Governments.

The Competition Principles Agreement (CPA), signed by the Australian, State and Territory governments, established the overriding objective of competition policy as being to maximise Australia’s welfare by maintaining and enhancing competition, where appropriate, in markets. Clause 5 of the CPA states:

- ... legislation should not restrict competition unless it can be demonstrated that the:
  - (i) benefits of the restriction to the community as a whole outweigh the costs; and
  - (ii) objectives of the legislation can only be achieved by restricting competition.

The CPA requires a thorough assessment of the benefits and costs of restrictions on competition on various stakeholders — recognising that the costs are often more diffusely spread across the economy and are therefore more difficult to observe than

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the benefits that accrue to particular sectors. The CPA recognises that there will be circumstances where restrictions on competition are justified on public interest grounds. However, it also puts the onus of proving that a restriction on competition is in the public interest on those seeking to introduce or retain the restriction.

## **Cultural and related social policies**

The Australian Government has a range of cultural and related social objectives. These goals are pursued through various policies, including education and arts policies, and more specific policies relating to the books sector. The Australian Government's arts policies aim to 'encourage excellence in artistic effort, support for cultural heritage and public access to arts and culture' (Australian Government, 2009c). The promotion of literacy is also an important objective of government policies that helps to overcome social disadvantage, and to establish the platform of human capital that underpins economic prosperity.

The Australia Council for the Arts is the Australian Government's primary arts funding body which, through the work of its Literature Board, aims to 'support the excellence, diversity, vitality, viability and distinctiveness of Australian literature' (Australia Council, 2009a).

Beyond the support provided by copyright law, the Australian Government provides financial support for Australian literature in a number of ways (appendix F). In broad terms, they include:

- direct financial support for authors and publishers for the creation, production, marketing and export market development of Australian books
- funding for campaigns to increase awareness about the importance of literacy skills and about Australian literature more specifically
- prizes for excellence in Australian writing and publishing in a range of genres
- financial compensation for Australian works held in public and education libraries
- tax concessions for private organisations and charities whose goal is to support and promote Australian writers and literature.

In 2006-07, the Australian Government provided total cultural funding of \$25 million for literature and print media (Australian Government, 2009b).

Australian publishers are also eligible for general industry assistance measures that apply broadly across the economy, such as the Export Market Development Grants scheme and tax concessions relating to research and development. Chapter 6 contains further discussion of Australia's cultural policy objectives.

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## 4 Price and assistance effects

### Key points

- There are many substitutes for titles published in Australia. Thus, the market for any one title, or even for Australian-authored titles more generally, is not ‘closed’.
- By assisting publishers to segment international markets, PIRs potentially facilitate international price discrimination, which can lead to higher prices in individual countries.
- To the extent that PIRs raise book prices, they provide assistance to copyright holders, which will have flow-on effects to others in the books industry. The greater the price effect, the greater the assistance (and vice versa).
- The assistance provided by PIRs will fluctuate over time, increasing as the local industry’s competitiveness declines, and decreasing as its competitiveness improves. Changes in exchange rates can have significant effects in this regard.
- A range of evidence suggests that the repeal of the PIRs would lead to material downward pressure on prices in at least some market segments:
  - Price comparisons suggest that prices in Australia for some titles are from time to time higher than the price of those titles in the UK and the US. In many instances, the price difference is substantial.
  - Were PIRs removed, some books — particularly educational texts — could potentially be imported from Asia at substantially lower prices, and Asia might also come to serve as a source of some trade books in the future.
  - Were the PIRs removed, very low cost ‘remainders’ could be imported from the UK, the US and other markets.
  - Experience in other sectors supports the view that repealing the PIRs would likely put downward pressure on book prices in Australia, as do the book producers’ own predictions of contraction were the PIRs to be removed.

The study’s terms of reference indicate that the operation of the Parallel Import Restrictions (PIRs) potentially results in higher book prices, and also state that views differ on whether they cause ‘significantly higher prices’ for Australian consumers, compared to those in overseas markets.

Submissions to this study presented a range of views, and some evidence, on this matter. Many authors, publishers and others in the books sector maintained that book prices in Australia are often lower than those in major overseas markets, and

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that removing the PIRs would see little if any reduction in prices. Other participants, including some major book retailers, argued that prices should fall significantly were the PIRs to be removed.

To the extent that the restrictions do result in higher prices in the Australian market, they would effectively provide assistance to local book producers, similar in some respects to the effects of tariffs, quotas and other import restrictions that protect some other industries. This would be consistent with the view — expressed by many in the books sector — that removing the restrictions would cause the local book production industry to contract.

However, ascertaining the extent of any price effects ensuing from the PIRs is not straight-forward. In the first instance, determining the effects of removing the PIRs requires an understanding of the potential sources of books that might be amenable to parallel importation. Even where this is clear, data and methodological issues often bedevil attempts to compare book prices in different countries in a way that sheds light on the effects of PIRs.

With these difficulties in mind, this chapter examines:

- how the restrictions could assist copyright holders, by helping them to segment world markets and engage in international price discrimination
- what the available evidence is able to reveal about the PIRs' impact on book prices in Australia.

## **4.1 How PIRs potentially result in higher book prices and assist copyright holders**

### **What affects the price of books?**

The prices charged for different titles and editions reflect the interplay of many factors:

- These include the cost of creating, producing and supplying books, including the drafting and editing of manuscripts and purchasing of rights, design work, printing and binding, marketing, freight and distribution, and the costs that publishers incur when they provide books on a 'sale-or-return' basis to retailers.
- Factors at the retail level include: the level of competition among booksellers, which can influence the retail mark-up on the prices charged by publishers; the retailing strategies adopted by different booksellers, such as the level of sales service provided and whether they offer particular titles as deeply discounted 'loss-leaders' to lure customers through the doors; and any taxes due on the sale.

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- Factors on the demand side include consumers' income levels, preferences for different genres, authors and titles, and the availability and price of close substitutes for the books in which consumers are interested.

In regard to the availability of substitutes, any individual title published in Australia faces competition from a range of sources. These include rival titles in the same genre, whether locally-produced or imported, and foreign editions of the same title available from foreign on-line booksellers. Also, rather than buying a particular title new, consumers can obtain it from a library or second-hand bookstore. The upshot is that the market for books in Australia, including for those titles published in Australia, is by no means fully 'closed'.

However, the extent to which alternative sources of books constrain the price of particular titles on the Australian market depends on how close a substitute they are in the consumer's eyes, and on their price. Anything that increases the price of these substitutes — or excludes them from the market altogether — will provide more room for a publisher to correspondingly raise the price of its titles.

### **Direct effects on the price of books protected by the restrictions**

As noted in chapter 3, the immediate effect of PIRs is to insulate book titles published in Australia from import competition. In the absence of PIRs, local booksellers or book buying groups could source legally-produced foreign editions of that title from whichever international supplier had the lowest cost or best value-for-money edition. This competitive threat would pressure the local publisher to lower the price of its own edition *if*, after taking into account taxes and freight etc:

- an 'equivalent' edition (defined in box 4.1) of a title was available at a lower cost from abroad and/or
- a different edition of the title, that represented 'better value' (also see box 4.1), was available from abroad.

But when shielded from this potential source of direct competition, a publisher can charge booksellers a price which is above the cost of an equivalent foreign edition, certain in the knowledge that it cannot be undercut by such an edition.

In effect, PIRs support the segmentation of world book markets, assisting publishers to charge different prices for the same or a similar product in different countries. Although sometimes the publishing rights to a book are sold as 'world rights', often they are split up and sold separately for particular markets, or sub-groups of markets. For example, in the case of English-language books, separate publishing rights might be sold for the United States (US), the United Kingdom (UK), Australia and/or other key Commonwealth countries, and 'the rest of the world' (including Asia,

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#### Box 4.1 Comparing different editions

Titles may be published in a number of editions, both within the one country and across countries. Editions may vary in terms of paper quality, size, cover material and sometimes content.

By an 'equivalent' edition, the Commission means an edition with essentially the same characteristics as the Australian edition, in terms of format, cover material, content and so forth. In practice, there may be variations between Australian and foreign editions, even those in the same format and binding. Sometimes, for example, there may be some differences in content — such as a forward by a local identity — or a different cover design or even title, although in broad terms the editions are equivalent.

However, often there are more substantial differences in the editions available in different markets. For example, many trade books first appear with hardback covers in the UK and the US, with smaller (A or B format) paperbacks released later in the life cycle of a title, whereas many Australian editions are printed initially as large (C format) trade paperbacks. Also, Australian-authored titles are sometimes re-edited to make changes to character and object names, spelling and expressions, particularly for the US market.

Typically, consumers will be willing to pay more for what they perceive to be a better quality format than a lower quality format, and to pay a price premium for a localised edition. But even with such differences, it is likely that the availability of a foreign edition of a particular title would provide significant price discipline on a local edition. In this sense, the issue is not simply whether 'lower cost' books are available abroad, but whether 'better value' books are available (even if, in some cases, they are more expensive than a lower quality Australian edition; or, in other cases, they are of lower quality than a more expensive Australian edition).

For analytical purposes, comparisons of equivalent editions — 'like-with-like' — in principle provide the best means of ascertaining price differences between markets.

Africa and the rest of Oceania). With PIRs in place to prevent 'arbitrage', this system assists with international price discrimination.

For PIRs to be effective in allowing a local publisher to raise the price for a particular title, two additional conditions must be met.

First, the title itself must have some 'market power' in the Australian market — otherwise, as alluded to above, different titles (including those not published locally and thus not directly covered by the restrictions) could take the title's sales by being sold at a lower price, or representing better value for money. As several participants emphasised, books are not plastic buckets, where any colour will do and price is virtually all that counts. Rather, titles, even those on a similar topic, are differentiated from each other — they are only 'imperfect' substitutes. Even though

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numerous titles may be published, each title may be sufficiently different from others that publishers can, to an extent, exercise some market power in setting the price of the book. For some titles — those in the *Harry Potter* series, for instance — this market power will be substantial.

The second condition for PIRs to be effective in allowing a higher price is that the local demand for the title must be such that it can command a higher price in Australia (for an equivalent edition) than in at least one other territory where the title is sold. Importantly, if no lower cost foreign edition of the title was available, the PIRs of themselves would have no direct impact on the price of the Australian edition. In this case, its price (with or without PIRs) would simply reflect local market conditions.

### **How such price effects manifest as assistance to copyright holders**

To the extent that these conditions are met in practice, the PIRs allow the prices paid for books published in Australia to be higher than could otherwise be charged. This would provide a form of ‘assistance’ to copyright holders, which could manifest in a range of ways.

In the first instance, the value of higher prices would show up directly as higher profits for publishers. In the absence of any off-setting cost increases, higher book prices would directly raise the net returns from publishing books.

In practice, it is likely that publishers would face higher costs in some respects — for example in acquiring Australian rights (see immediately below) and also through incentives to use higher-cost (local) printers or fast-track delivery arrangements to meet the requirements of the 30 day rule, and thereby qualify for the protection that the PIRs provide (see chapter 5). Higher returns to publishing, in the first instance, could also induce an expansion in Australian publishing activity, which would erode any initial increase in the profitability of existing publishers, as the cost of resources used in publishing (such as editors and printers) is bid up.

Higher returns available from the sale of works published in Australia, consequent upon the price effects of the restrictions, would also be reflected in a higher value for the Australian rights of literary works. That is, aware of the potential for publishers to gain higher prices for works published and sold here, local authors should be able to command higher advances and royalties from publishers than they otherwise could. Equally, foreign copyright holders (that is, authors and/or the publishers to whom they have sold world or offshore rights for their works) would be expected to receive higher payments for the Australian rights to their titles.

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The ultimate distribution of the benefits of assistance to copyright holders would depend on the relative bargaining power of the various parties in the book industry supply chain, together with underlying market conditions. Suffice it to say that the benefits of the assistance would be shared around to some extent.

### **Nature of assistance to copyright holders flowing directly from the parallel import restrictions**

The way PIRs can assist copyright holders is similar, in some respects, to the effects of other import restrictions which apply to some other industries. Tariffs, for example, cushion domestic industries from exposure to international competitive pressure. They increase the price of competing imports and thereby provide room for local producers to lift their prices, albeit at the expense of local consumers. Likewise, PIRs also cushion domestic copyright holders from at least direct international competition (other than via online booksellers), potentially allowing them to charge higher prices for their goods in the Australian market.

As a mechanism for providing assistance, the PIRs have some features that affect their desirability relative to other means of supporting the books industry.

First, to the extent that the PIRs support higher book prices in practice, the quantum of assistance they provide to copyright holders depends on the commercial success of the title. That is, the more of a title people buy and/or the more they are willing to pay for the title, the higher the overall value of assistance. In this sense, the PIRs augment market forces. This contrasts with, for example, the provision of grants by the Australia Council (appendix F), which are not tied to the sales volume of a title.

Second, part of any price increase attained by foreign-authored books in the local market will be ‘captured’ by the foreign author and/or publisher which created the work, and sold its rights to the Australian publisher or published the book here itself. In effect, to the extent that PIRs result in higher prices for books more generally, the restrictions cause Australian consumers to effectively subsidise not only local holders of Australian copyright but also foreign holders of Australian copyright. (Estimates of the ratio of this ‘leakage’ to foreigners are presented in appendix E.) In contrast, with a tariff, the higher price paid by local consumers for foreign goods is offset by the tariff revenue received by the government.

Third, the quantum of assistance provided by PIRs depends on the price of the local edition compared to competing foreign editions. If the price of those competing editions exceeds the price of an (equivalent) Australian edition, then the PIRs have no price effect and afford no substantive assistance to local producers. However, if the price of a foreign edition substantially undercuts the Australian edition, the

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effective ban on the foreign edition means that the assistance provided, on a per book basis, is also substantial.

This level of assistance for copyright holders, resulting from PIRs, is tempered by competition from foreign online book retailers (most notably Amazon), which exposes Australian rights holders to international pricing pressure, at least to some extent. However, the price impact of this competition is a matter of some debate (see chapter 5). The upshot is that the assistance provided by PIRs will fluctuate over time, particularly with changes in exchange rates and also with other cost factors that affect the competitiveness of books produced in Australia relative to those produced abroad.

### **Indirect price and assistance effects on other books**

The foregoing indicates how PIRs can protect the price of titles published in Australia when better value editions could otherwise be imported from abroad. Higher prices provide a form of assistance to producers of those books.

PIRs may also provide some assistance to the producers of other categories of books sold in Australia, but the mechanism by which they do so is less direct.

One of these categories is books published in Australia that are not sold overseas. PIRs do not directly affect the price of these books because, without versions overseas that could be imported into Australia to compete with the local edition, publishers can price the local edition at whatever the local market will bear, taking into account the availability and price of other titles on the market with which they compete. However, to the extent that PIRs can enable a higher Australian price for rival books that are also sold overseas, this is likely to provide some room for publishers to increase the price of their ‘local market only’ books too. In turn, this would represent a form of assistance to local producers.

Another category of books whose price is not directly affected by PIRs are those foreign-authored books that are not published in Australia. Booksellers are able to import these books at any time from the lowest cost or best value source they can identify and deal with. The restrictions might still have some indirect impact on the local price of these books insofar as they raise the general price level of books in Australia. This would provide some room for individual booksellers to price imported books at higher levels too, although competition between booksellers might be expected to reduce their capacity to do so.

However, it is possible that, in fully restricting a major part of the market, Australia’s PIRs have reduced the incentives for the establishment of lower cost supply options that could otherwise have serviced the still fully open (non-PIR

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protected) part of the market. If that is the case, it would increase the likelihood that the restrictions have put upward pressure on prices across the whole of the market, rather than only on those titles that are technically eligible for PIR protection.

## 4.2 Evidence on the price effects

While the PIRs potentially raise the prices of books published in Australia, assessing the actual magnitude of any such price effect is not straight-forward. To start with, it requires an understanding of the foreign sources from which book imports might be feasible in the absence of PIRs. Even where this is clear, the next issue is whether books could be sourced from these markets at sufficiently attractive prices to make them competitive with locally produced books.

Many previous studies of PIRs have relied on comparisons of prices in Australia with those in other, developed, English-speaking markets, particularly the UK and the US. Participants in this study also provided such comparisons, and the Commission has augmented these with its own analysis.

Even so, gaining a clear indication of the effects of PIRs through such analyses is difficult. In the first instance, significant methodological hurdles arise in attempting to undertake valid comparisons:

- There are various complexities in ensuring comparison of like-with-like. These include how best to make allowance for cross-country differences in formats, cultural re-editing, rates of tax levied on books and typical discounts to recommended retail prices; as well as how to account for freight costs which will depend on the source country, freight mode and freight volumes, and whether books are provided on a sale-or-return or firm sale basis.
- The outcomes of international price comparisons are significantly affected by movements in the exchange rate. To mitigate the sensitivity of the results to the exchange rate requires comparisons at several points in time.

In the second instance, the results of price comparisons between current list books in the US, the UK and Australia, even if robust methodologically, cannot provide a precise indication of the price impacts of PIRs. This is especially the case as book prices in these countries are, *prima facie*, themselves inflated by PIRs. Although some current list books might be parallel imported from these countries in the absence of PIRs in Australia, the cost at which such books might be procured for shipping to the Australian market could be less than the cost of those books when sold in their home markets. Further, some books might be sourced from elsewhere at a lower cost, such as from other western economies or from Asia. And remainders from any

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country, including the UK and the US, could also offer a much cheaper source of books, including of broadly like-for-like editions, at least for some titles.

In interpreting the results of price comparisons, it is also important to recognise that, even if and when the *average* price of books in Australia is less than the average in other markets, PIRs may still have price impacts by preventing the importation of *some* titles that are available more cheaply from abroad. Thus, there is a need to consider the variability in price gaps for books in different countries; not just comparative average price levels.

For all these reasons, while price comparisons may in some circumstances shed light on the effects on PIRs, or the potential effects of their repeal, they need to be interpreted carefully and, ideally, assessments of these matters will draw on a range of evidence and indicators. With these considerations in mind, this section explores what the available evidence is able to reveal about the PIRs' impact on book prices in Australia.

## **Prices of trade books**

### *The PSA/ACCC studies*

The Australian Competition and Consumer Commission (ACCC) and, before it, the Prices Surveillance Authority (PSA) undertook a range of surveys of 'current list' (as distinct from remaindered) book prices for the period from 1989 to 2001. These included: a survey of the recommended retail prices (RRPs) in publishers' catalogues for the UK, the US, Australian and Canadian markets; surveys of bestsellers in the UK, the US and Australia; and a survey of prices of medical texts in those countries.

The lack of extensive electronic datasets on book sales at the time of these surveys restricted the sample sizes, types of price data and methodological approaches that could readily be used in the studies. The comparisons were based on RRP in different countries, and often sought to account for differences in the format of books in different markets, and to adjust for the effects of differential tax arrangements applying to books in different countries.

The studies revealed that, while the price of books was often higher in Australia than in the UK and the US, these price differences varied over time. In particular, the ACCC found that, in three of the four years to 2001-02, the price of bestselling paperback fiction books was lower in Australia than in the UK (see appendix D).

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However, based on the full results of its studies, the ACCC concluded that Australian consumers had paid significantly more for books than their counterparts in the UK and the US for most of the period covered by its surveys:

Inquiries by the ACCC consistently showed that Australian prices were substantially higher than in the UK and the US until the mid-1990s. Up to the date of the last study in 2001 at least, the surveys suggested that though some titles were priced competitively with comparable overseas markets, there were large differences in respect of other titles. As such, the ACCC concluded that there were substantial consumer benefits that could be realised if the restrictions were removed. (ACCC, sub. 260, p. 11)

### *Participants' comparisons of Australian and US/UK current list prices*

During the current study, several participants — including booksellers' groups, several publishers and the Australian Society of Authors — submitted their own comparisons of prices in Australia, the UK and the US. The comparisons are described in appendix D.

The findings and conclusions that participants drew from their comparisons varied. For example:

- In comparisons with UK and US prices for around 10 bestseller titles at around the end of 2008, the Australian Publishers Association (sub. 244) found that the Australian price was occasionally the most expensive among the three countries, and more often was the least expensive.
- In comparing the prices of 11 international bestselling titles at the end 2008, the Coalition for Cheaper Books (sub. 218, p. 7) found that 'in almost all cases, Australian recommended retail prices are substantially more than the UK or US'.
- Hachette Australia (sub. 232) found that around three quarters of its 20 top selling titles were cheaper in RRP terms in Australia than in the US, with only one quarter more expensive, and that all of its titles were cheaper than could be obtained from Amazon when freight of \$15 per book was included.
- Leading Edge Books (sub. 254, p. 8) concluded on the basis of its comparison of 16 bestselling titles in Australia, the UK and the US that '... the retention of territorial copyright does not cause Australian consumers to pay a higher price for books.'

Taken at face value, the comparisons suggest that prices of many titles in Australia can be competitive with, or lower than, the price of UK or US editions. At the same time, the comparisons — including some of those submitted by participants opposed to the removal of PIRs — suggest that there are also titles available at lower cost in the UK and the US.

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However, the comparisons had a number of aspects in common that, taken together, inevitably weaken the level of confidence that attaches to the results as a basis for understanding the price effects of PIRs:

- Each study examined only a small number of bestselling books, and many focused on comparing the price across countries for the first-release format. As Australian first release books are often C format trade paperbacks whereas those in the UK and the US are often hardbacks, the comparisons were not always on a like-with-like (that is, equivalent edition) basis.
- Most of the comparisons relied on RRP. To the extent that discounting practices vary across countries, comparisons based on RRP may give a misleading indication of retail price differentials between the different markets.
- There were also variations in the way in which prices were adjusted to reflect freight costs and other factors. Some grossed up the overseas price by 30 per cent to account for freight, for instance. Readings and Gleebooks (sub. 226) stated that their freight costs (plus statutory charges) could be as high as 40 per cent of the cost of a book, but that for bulk orders of books from overseas — as would potentially be a more frequent scenario in the absence of PIRs — this share could be as little as 10 per cent. Likewise, the Coalition for Cheaper Books (sub. DR509) indicated that the cost of air freighting books from the UK and the US to Hong Kong represented less than 20 per cent of the wholesale price of the books supplied to Hong Kong — implying that it would be a smaller share of the retail price — and that the same freight charges would apply for books shipped directly to Australia.
- As the comparisons were undertaken for book prices at a similar, single point in time, they cannot reveal trends and shifts in price differentials over time. For assessing the merits of PIRs, it is their effect over time that is of most relevance. In this context, participants' comparisons were undertaken following the fall in the Australian dollar in 2008, which would be expected to reduce the level of Australian prices compared to those abroad. Indeed, Readings and Gleebooks (sub. 226, p. 3) noted that '... last June when the Australian dollar was strong against the US dollar many overseas originated books were significantly more expensive in Australia'. On the same matter, albeit from a different perspective, John Wiley & Sons said:

... there has been widespread over-pricing (particularly during the recent period of a strong Australian dollar, when we heard anecdotally that we were one of only a very small group of publishers to reduce the price of our imported trade titles as the Australian dollar strengthened against the US dollar and the pound) ... (sub. 169, p. 1)
- A broader limitation is that, as mentioned above, it is not possible to conclude solely from comparisons of prices of current list books in these countries what the effects of removing Australia's PIRs would be.

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### *The Commission's comparisons of Australian and US/UK current list prices*

While aware of the inherent limitations of price comparisons, the Commission has undertaken extensive comparisons for this study to help explore what such exercises can reveal. Its comparisons drew on the comprehensive data contained in The Nielsen Company's BookScan database for 2007-08, and the first 11 months of 2008-09, for top 5000 editions (in sales terms) in Australia, the UK and the US.

The Commission undertook three types of comparisons:

- 1) The first compared the RRP's of books in the different countries, matched by title, author, format and publication date to generate 'like-with-like' comparisons.
- 2) The second, a variant of the first, used the BookScan point-of-sale price data for Australia and the UK, rather than the RRP data.
- 3) The third eschewed the like-with-like approach and compared the cheapest priced edition of particular titles in each market.

The Commission used a conservative approach in matching titles and editions from the different datasets.<sup>1</sup> While this reduced the sample size, particularly for the like-with-like comparisons, it also limited the risk of inappropriate matches. Even so, the sample size for the comparisons was over 300 and 900 matches in each year for the Australia-US and Australia-UK like-with-like comparisons, respectively, and over 1200 matches for the lowest-cost comparisons with both countries. The Commission also conducted sensitivity analyses of the results, in particular to examine the effects of exchange rates on measured price differences between the countries. The methodology used, and detailed results, are discussed in appendix D.

Even with these extensive data, methodological variety and safeguards, a number of specific aspects of the approach adopted mean that caution is needed in interpreting the results of the comparisons. Among other things, the comparisons based on RRP

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<sup>1</sup> For this final report, the Commission expanded the sample size for its US like-with-like comparisons, from 230 to 347 (for 2007-08), by matching editions listed as 'trade paperbacks' in the US BookScan database with those labelled as B formats in the Australian database. There can be some size and quality differences between these books but, in general, they are sufficiently comparable in the Commission's view to be included in the like-with-like comparisons.

The Commission also considered matching editions labelled as 'mass market paperbacks' in the US BookScan database with those labelled as A formats in the Australian database. Inclusion of these matches would increase the average price gap on a like-with-like basis from 35 per cent to 48 per cent in 2007-08. These formats are of similar dimensions, although the US mass market paperbacks tend to be printed on lower quality paper and have a lower quality appearance. While there is a case for their inclusion in the like-with-like comparisons (possibly with an adjustment to reflect quality differences), the Commission has taken a more conservative approach and omitted these matches.

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data suffer the inherent limitations of such exercises (see above). While the use of the BookScan point-of-sale price data potentially overcomes this problem, comparisons based on such data are susceptible to their own biases — for example, they do not account for the influence on average prices of the sale of books through different retail channels (appendix D). Also, while making allowance for the levying of GST on books in Australia, the Commission has not sought to adjust retail prices to reflect differences in freight costs.

For this and a range of other reasons, the results of these comparisons are at best an indication of differences between the retail prices of books in the different countries; they do not, of themselves, attempt to indicate the price at which the books sold in other countries *could* have been sold in Australia.

### *Results for 2007-08*

The results suggest that, in 2007-08, and recognising Australia's high exchange rate at this time, trade titles in Australia were somewhat more expensive than editions available in the UK, and markedly more expensive than those available in the US:

- 1) The RRPs of matched editions in Australia were on average 9 per cent higher than the RRP of like editions in the UK, and 35 per cent higher than the RRP of like editions in the US.
- 2) The average selling price (ASP) of matched editions in Australia was on average 18 per cent higher than the ASP of like editions in the UK. (Data on ASPs are not available for the US market.)
- 3) The price of the cheapest Australian edition of matched titles was on average 13 per cent higher (on an RRP basis) and 22 per cent higher (on an ASP basis) than the cheapest edition of the titles in the UK, and over 50 per cent higher (on an RRP basis) than the cheapest edition of the titles in the US.

There was some variability within these general trends. In particular, for around one-sixth of titles in the Australia-UK like-with-like comparison, the Australian RRP exceeded the UK RRP by at least 25 per cent. And for one-fifth of titles in the Australia-US comparison, the Australian price exceeded the US price by at least 50 per cent.

The Australian price also undercut the foreign price in some cases. For example, the Australian RRP was lower than the US RRP for like editions of matched titles in 5 per cent of cases, and lower than the UK RRP in 20 per cent of cases.

The above estimates relate only to one time period, in this case the financial year immediately prior to the recent fall in the value of the Australian dollar. As the

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Commission noted in the discussion draft, Australia's exchange rate was relatively strong against the US dollar in 2007-08. When the Australian dollar is weaker, the price differences between Australia and the US would be expected to be smaller.

### *Results for 2008-09*

For this final report, the Commission extended its analysis to cover data for the first 11 months of 2008-09: that is, for the period when the Australian dollar was much lower against the US dollar (though a little higher against the UK pound). This period also covers the time for which most participants undertook price comparisons.

As expected, the estimated price difference between Australia and the US was much narrower in 2008-09, although, reflecting the variability in prices around the average, the results still contained many titles that were markedly more expensive in Australia compared to the US:

- The RRP of matched editions in Australia was on average 12 per cent higher than the RRP of like editions in the US, with the difference exceeding 25 per cent for more than a one-sixth of the titles.
- The RRP of the cheapest edition of matched titles available in Australia was on average around 27 per cent higher than the cheapest edition of those same titles in the US. The price difference exceeded 50 per cent in one-quarter of the cases.

For the like-with-like comparisons with the UK:

- On an RRP basis, the price of matched editions in Australia was on average 12 per cent higher than the price of editions in the UK. The price difference exceeded 25 per cent in one-quarter of the cases.
- On an ASP basis, the price of matched editions in Australia was on average 25 per cent higher than in the UK. The price difference exceeded 40 per cent in more than one-quarter of the cases.

The price of the cheapest edition of matched titles available in Australia was on average around 13 per cent (RRP) and 27 per cent (ASP) higher than the cheapest edition of those same titles in the UK. In around one-quarter of the cases, the price gap exceeded 30 per cent (RRP) and 45 per cent (ASP).

### *Prices in other 'open' markets*

The Coalition for Cheaper Books cited the experience of Dymock's in the Hong Kong market as an example of the prices at which booksellers can obtain trade books in an open market.<sup>2</sup> The Coalition's submissions indicated that Dymock's

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Hong Kong store can source equivalent editions of books for 30 to 35 per cent less, on average, than can its Australian stores. It noted that, even if Dymock's were forced to trans-ship books to Australia via Hong Kong, the cost reduction to its Australian stores would remain close to 20 per cent (see box 4.3).

**Box 4.3 Dymock's Hong Kong wholesale price comparisons**

In its initial submission, the Coalition for Cheaper Books (sub. 218) reported a comparison of the best cost price for Dymocks in Australia to the best cost price for Dymocks in Hong Kong, for a selection of 11 international bestselling titles. The comparison entailed the same edition of each book, sourced from the same multinational publisher, and adjusted for the GST paid on Australian sales. The Coalition stated that, on average, the wholesale price was 35 per cent less in Hong Kong (although, as noted in the discussion draft, the initial submission did not indicate at what price the titles could be landed and sold in Australia).

In its supplementary submission (sub. DR509), the Coalition submitted data for a further 32 books, and included information on the freight costs to Australia. The data indicated that the landed price of the books in Hong Kong was on average almost 30 per cent less than the best local cost available in Australia. The Coalition stated that the freight cost from the UK and US is the same for Australia and Hong Kong, implying that the books could be landed here (in the absence of PIRs) at the same price as they are landed in Hong Kong. The Coalition further stated:

Even were Dymocks to trans-ship the basket of books from Hong Kong to Sydney, the additional cost [would still leave the basket] 18.72% cheaper. ... Dymocks advises that on occasion, they have purchased books for Australia through Hong Kong but in very small volumes. They have not purchased any product direct from international publishers as the closed market in Australia prevents them from doing so and thus offering comparable prices to their Hong Kong Stores. (pp. 3–4)

Taken at face value, the data provided by the Coalition suggests that substantial reductions in prices could eventuate were Australia to remove its PIRs. However, the Commission notes that, in these circumstances, foreign publishers would not necessarily supply Australian retailers at the wholesale prices they currently offer to booksellers in 'cheaper' countries. In the absence of PIRs, foreign publishers are just as likely to want to engage in price discrimination as at present. Whether they could do so effectively would depend in part on the level of competition they would face from other suppliers of titles they stock, including from publishers or wholesalers in other countries (and wholesalers in their own country).

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<sup>2</sup> New Zealand is technically also an open market, but in practice it operates largely as part of a collective 'ANZ' market, with little parallel importing. Retail prices in New Zealand are not significantly different from those prevailing in Australia (appendix C).

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### *Sourcing books directly from Asia*

Beyond the specific case of Hong Kong, the Commission received differing views during the study on the prospects and impacts of Asia as a source of supply to the Australian trade market were PIRs to be removed.

On the one hand, John Wiley & Sons argued that Asia could, in the absence of PIRs, become a source of cheap books for Australia via the emergence of Asian wholesalers offering appropriate terms and conditions for the Australian market:

Currently we are not aware of any wholesalers in Asia that offer a sufficiently quick and reliable service, with the desired trading terms (particularly the right to return over-stocks), to make them an immediate threat if the 30/90 day provisions were removed. However, given the potential market size that Australia would present in these circumstances, we believe that one or more wholesalers would soon set up in Asia (and offer the required trade terms) and represent an attractive source of supply to booksellers in Australia. (John Wiley & Sons, sub. 169, p. 2)

The Australian Society of Authors (sub. 70, p. 4) argued that, without PIR protection, Australian booksellers could also negotiate bulk, discounted sales at low royalty rates, or buy from cheaper English-language markets such as India. In discussions with the Commission, Michael Moynahan (CEO of HarperCollins Australia and, until recently, the Managing Director of Random House India) indicated that it is possible that a wholesaler might establish in Australia which would source some stock from the Indian market and/or other Asian markets, and that some large Australian booksellers might also be able to source some stock directly from these markets.

On the other hand, Mr Moynahan also indicated that, while India has a sizeable English-language market with a number of (multinational and domestic) publishers and wholesalers, it is unlikely that, in the absence of PIRs, they would at present be able to offer a reliable and comprehensive supply of books to the Australian market. He also indicated that, while the prices of many books published in India are often very low (in part to compete against pirated editions, which are rife in that country), the prices of some 'western' titles in India are not substantially less than their UK and US prices. Similarly, REDgroup retail said:

Our experience gained from working in both the Asian and New Zealand markets is that: ... [w]e do not see any immediate likelihood of efficient alternative supply channels being available from Asia that would fulfil an Australian bookseller's broad backlist stock needs with a compelling cost and margin offer, taking into account factors such as freight to store and markdown on unsold stock. (sub. DR471, p. 2)

Hachette Australia (sub. DR480, p. 4) went further and argued that the notion that wholesalers in Asia might emerge to put downward pressure on prices in Australia is

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‘pure fantasy’, due in part to the nature of the Asia book market, including differences in Asian and Australian tastes in books.

The Commission accepts that, particularly in the short term, Asia may not be able to offer a competitive and comprehensive supply of (legally-produced<sup>3</sup>) books to the Australian market, which in turn implies that any pricing pressure from this source, were the PIRs to be removed, could be limited. However, on the evidence before it, the Commission cannot rule out the possibility that Australian booksellers or wholesalers would be able to source at least some trade titles at a relatively low cost from Asia in the absence of PIRs, and particularly as these markets develop over time.

### *Remainders*

‘Remainders’ are printed copies of titles that generally have failed to find significant acceptance in a particular market and/or which have had print runs greater than demand. To avoid the costs of storing or pulping the books, and to recoup some of their investment, publishers typically sell them to specialist remainder wholesalers at very low prices. This practice occurs in all countries, although the time at which a particular title is remaindered in different countries may vary depending largely on its date of initial release and subsequent popularity.

Where titles are remaindered overseas ahead of the date at which they are remaindered in Australia, the ability to parallel import the remaindered edition could substantially reduce the price of these titles on the Australian market. Based on figures provided by Spinifex Press, the price reduction to Australian consumers could be in the order of 90 per cent:

A book published in Australia and selling for \$24.95 might be published in a much larger print run in North America, but doesn’t completely sell out and so it is remaindered to the highest bidder (in the USA 25c is a high bid for remainders). It could easily be dumped on the Australian market where the author is better known and sold at \$3.<sup>4</sup> (sub. 61, p. 4)

While remainders are already a feature of the Australian book market, some local publishers argued that the relaxation of PIRs could lead to a deluge of such inexpensive books in Australia, in particular for titles published in the UK and the US (box 4.4).

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<sup>3</sup> Some participants expressed a concern that removal of the PIRs could lead to an increase of pirated copies of works from some Asian markets. This matter is discussed in appendix B.

<sup>4</sup> While the availability of imported remainders offers significant price savings for Australian consumers, they may also cause a reduction in the total royalties received by authors, depending on whether they supplant sales locally. The impact of remaindering on Australian authors’ royalties is discussed in chapter 5.

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#### Box 4.4 Selected participants' comments on remainders

Participants provided varying views about the nature of remainders and the extent to which their parallel importation might generate lower book prices in Australia:

The US publishing model is all about oversupply and overproduction where return rates for most trade publishers are 40/50% range. PIR has been the only roadblock to the US or UK freely remainder dumping into Australia. The 12 month proposal [in the discussion draft] opens this floodgate, compounded by the US financial crisis and the stock piling of a maximum volume of inventory where author advances need to be recouped which means the maximum flood of bargain basement books into Australia. (Macmillan Publishers Australia, sub. DR506, p. 2)

[Remaindering is not] restricted to the last few copies of books that are at the end of their life, or failed titles that have no life left in them, as the Coalition for Cheaper Books would have us believe. Books are remaindered for a number of reasons, including over-printing, making way for a new format at a new price that might appeal better to the intended market and higher than anticipated returns. ... Overseas dumping of remainders is uncontrollable and potentially hugely damaging and this market is very appealing for USA and UK sellers, as it is a long way from their home market. (Murdoch Books, sub. DR387, p. 2)

Remainders principally derive from end of line and marginal titles, which have either failed, or not sold to their expectation. Generally speaking, if an international book has failed, or is overstocked in one market, it will fail, or be overstocked, in all markets. By definition, this means the title is marginal, and there is limited or no demand, and it is not being stocked by booksellers of any variety. This does not now, nor will it in the future, create downward pressure on the price of author brands, from where the majority of backlist sales derive. Hachette contends that remainders may increase, but because of the nature of those remainders, they will not place downward pressure on backlist prices. (Hachette Australia, sub. DR480, p. 3)

We do not believe that the opportunity to import remaindered books would necessarily have a downward effect on prices. By definition the availability of specific titles as remainders is finite and their impact would be temporary rather than long term. Our experience as booksellers is that consumers see remainders as opportunistic or impulse purchases. Remainders are already available to booksellers ... so it is hard to see remainders having a significant (if any) dampening effect on prices. (Readings/Gleebooks, sub. DR474, p. 1)

Overseas evidence suggests that the availability of remainders as a lower priced source of books is limited to back list and niche titles. For example, in New Zealand, the LECG (2007) study found that parallel importing (including importing of remaindered books) has mainly occurred in these segments of the market. Although remainders may principally derive from end of line and marginal titles, Text Publishing stated:

Remainders would generally enter the market some time after a book has been published here and would have their greatest impact on backlist titles, which might be selling well for a number of reasons: simply because demand has grown, or because a film based on the book is screening or because the book has been placed on school courses. (sub. 63, pp. 41–42)

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However, a number of book industry participants saw the price impacts of remainders as being limited principally to the titles themselves; they did not see parallel imports of remainders as providing a significant source of pressure on current list book prices more generally (box 4.4).

### **Prices of educational books**

Price comparisons contained in submissions, despite the limitations noted earlier, indicated that educational books for sale in Australia are much cheaper than in the US. For example:

- Cengage Learning Australia compared the RRP (including GST) of the top 10 textbooks sold in Australia with the price on Amazon — finding that, on average, the price in Australia was around 30 per cent less than the Amazon price. It concluded that the ‘pricing of local (tertiary) products also indicates a highly competitive environment compared to pricing in the US and Canada for similar products’ (sub. 52, p. 8).
- John Wiley & Sons (sub. 169) also compared the RRP in Australia (including GST) to the US list price of their top 20 selling US-higher education titles. Wiley concluded that a US textbook is around 30 per cent cheaper in Australia than in the US.
- The Australian Publishers Association compared the October 2008 RRP (excluding GST) of 40 bestselling US textbooks sold in Australia with the price on Amazon, concluding that the Australian textbook prices were on average 33 per cent less than the US price. (sub. 244, p. 42)

The comparisons were all based on an exchange rate of around 70 US cents to the Australian dollar. Presumably, the differences between the price of textbooks in the two countries would be narrower when the Australian dollar was stronger.

Textbooks are far cheaper in Asian markets. Graeme Connelly — who is the head of the Campus Booksellers’ Association — noted a significant difference between the price of textbooks in Australia and those in Asia:

Currently a textbook that might cost US\$100 in the U.S. but might sell in Australia for A\$85 (significantly cheaper given current exchange rate) but nowhere near as cheap as in Asia (circa) A\$35. (sub. 60, p. 3)

John Wiley & Sons indicated that ‘the differential pricing in these (developing nation) markets is heavily subsidised by the US, UK and Australian pricing models.’ (sub. 169, p. 10).

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This evidence supports the notion that educational publishers practise international price discrimination, with the highest prices in the US where income levels are typically also highest, somewhat lower prices in Australia and much lower prices in Asian markets.

There was some disagreement among participants about the extent to which textbooks could be imported from Asia were Australia's PIRs to be repealed. Peter Donohue (sub. DR273) argued that educational publishers do not currently rely on the 30 day rule<sup>5</sup> and that, were the importation of textbooks from Asia to occur, global educational publishers would inhibit it very effectively by refusing to supply Asian-based wholesalers out of their Asian subsidiary companies any quantities in excess of identified Asian course needs. Pearson Australia (sub. DR528, p. 1), on the other hand, argued that there would be sufficient market opportunity to support the importation of textbooks from Asia.

It should be recognised that, were parallel importation from Asia to become feasible, the price at which textbooks are currently available in Asia would not necessarily remain at its present level. In this respect, the International Publishers Association (IPA) argued that 'without territoriality, international publishers will stop creating low price editions to be sold in developing countries, as these low price editions risk being imported to — and hence harming — economically stronger markets' (sub. 242, p. 3).

The Commission agrees with the IPA insofar as it would expect international publishers to make substantial adjustments to their pricing and publication strategies were the major English-speaking markets of the US and UK to repeal their PIRs. However, were Australia to repeal its PIRs alone, in practice, publishers would have incentives to respond by effectively setting prices adjusted for developing countries and Australia. This could result in the prices in Australia declining somewhat and the prices in Asian markets rising somewhat, with the final price points ostensibly depending on the relative importance of the sub markets and the extent of natural protection between them, for example that provided by freight costs.

In turn, this suggests that substantially lower prices for some educational books in Australia may be possible, notwithstanding some erosion of current differentials were local booksellers to seek a 'sale or return' condition from Asian suppliers. That said, as John Wiley & Sons noted (sub. 169), many books for primary and secondary school are specially developed for the Australian (and possibly New Zealand) curriculum. This suggests that, if the PIRs were removed, any downwards

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<sup>5</sup> As noted in chapter 5, the Commission's assessment is that many books that are not technically PIR-protected are presently treated by booksellers as if they are. This partly reflects the difficulties of ascertaining whether particular titles have met the 30 day rule, together with the ability of publishers to leverage their relationship with booksellers to discourage parallel importation.

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pressure on prices would most likely be seen in the market for tertiary and professional books rather than primary and secondary school books.

### **Indirect evidence on price effects**

The price effects of the removal of PIRs in other markets may provide some indication of the price effects of the PIRs on the Australian book market. In this context, New Zealand lifted its blanket ban on the parallel importation of books in May 1998, and Australia lifted its restrictions on parallel importation of sound recordings in Australia in July 1998. These reform episodes and their effects are discussed in appendix C. The evidence suggests that the Australian reforms led to a marked reduction in the prices of CDs, although the effect of the New Zealand reforms on book prices, if any, is less clear. However, as noted in appendix C, these markets differ from the Australian books market in some respects, and there is some contention about the effects of the reform episodes. This means that care is needed in drawing implications from these reform episodes for the current study.

Beyond evidence of the effects of PIRs specifically, the more general experience with trade liberalisation and competition reform in Australia indicates that removing impediments to competition typically generates a range of pressures for price reductions. The experience in other sectors is that even just the threat of additional competition can generate incentives for local suppliers to align prices more closely with costs, and to search for efficiencies in their production processes and supply chains (see, for example, PC 2005, chapter 4). While it is not possible to predict in advance the precise form such efficiencies might take, as discussed in chapter 5, in the absence of PIRs there may be opportunities for cost savings in the distribution and production of books.

The contention of many in the books industry, that the sector would contract and that Australian rights would diminish in value were the PIRs removed (see chapter 5), is also *prima facie* an acknowledgement that the PIRs do result in higher book prices in Australia than would otherwise be the case in their absence. Were better value books not able to be imported from overseas, then removal of the PIRs would have little substantive impact on the industry.

## **4.3 Interpreting the evidence**

Based on the various strands of evidence set out in the chapter, it is the Commission's judgment that Australia's PIRs put material upward pressure on book prices. The magnitude of the effect will vary over time and across book genres, but at times will be substantial.

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The Commission recognises the inherent limitations of price comparisons but, in conjunction with the other evidence presented in this chapter, the results of the Commission's extensive comparisons leave little doubt that, but for the PIRs, Australian booksellers could have obtained and shipped many titles to Australia in 2007-08 for substantially less than they were charged by Australian publishers. And while currency movements in 2008-09 have reduced the price differences between Australia and the US, the evidence suggests that there would have remained opportunities to source various titles from the UK or the US for less than the prices charged by Australian publishers. (Of course, were PIRs not in place, in practice local publishers would no doubt be more attentive to the price of competing foreign editions in such circumstances when setting their terms and prices.)

As the Commission noted in the discussion draft (and as many participants emphasised in their post-draft submissions), when the Australian dollar is relatively weak against other currencies, average price differences will be small or may even reverse in direction. That is, it is possible that the *average* price of trade books in Australia will in some years be lower than the *average* price of equivalent editions in the UK and/or the US.

However, given the wide spread of prices around the average, and the availability at times of cheaper formats overseas, there are still likely to be opportunities in such periods to source some current list trade books at a lower cost from the UK or the US (and/or for booksellers to use this prospect to obtain more competitive terms from local publishers). Furthermore, with commercial scale importing, many firms would adopt hedging strategies to moderate the impact of currency fluctuations, as is the case for other product importing.

In the absence of PIRs, downwards price pressure could also arise from other sources, including from Asian markets and through the availability of remainders overseas. However, the evidence available to the Commission does not allow it to gauge with great precision the extent to which these additional, prospective sources of parallel imports would engender price pressure in the Australian book market, additional to that provided by competition from UK and US suppliers of current list books.

The upward price pressure of PIRs on book prices has a range of effects on the books sector and the economy more broadly. These effects, and the corollary consequences from the repeal of PIRs, are explored in Chapter 5.

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## 5 Impacts in the books market

### Key points

- The PIRs sustain higher activity in the book production industry in Australia, although the quantum is difficult to assess.
- For publishers and authors, the PIRs provide protection for books published in Australia from competition from overseas editions of those titles.
  - Books with an Australian-only audience are not directly assisted, but may benefit indirectly from the price raising effects of the PIRs.
  - For educational books, the PIRs facilitate the bundling of teaching and learning aids with core texts, albeit with students meeting the expense.
- The PIRs have created more demand for Australian printing, particularly as a result of the 30 day rule.
- In the absence of the PIRs, publishers (and printers) would generally need to make adjustments, with some finding new efficiencies that would at least partly compensate them for the greater degree of competitive pressure. These adjustments could impact on the income and publication of some authors.
- The effects of the PIRs on booksellers are mixed.
  - They facilitate some provision of additional services, particularly through independent booksellers, and help to sustain the ‘sale or return’ supply model.
  - However, they may also increase costs for booksellers and dampen aggregate demand for books from Australian stores, contributing to a trend towards online purchasing from overseas sellers.
- The benefits to the local industry are largely paid for by Australian consumers of books through higher prices and restricted access to better value editions of the titles they wish to purchase. There are also costs to other industries.

In chapter 4, the Commission concluded that the removal of the Parallel Import Restrictions (PIRs) would place downward pressure on prices and that, at times, the price effect is likely to be substantial. It thus considers that the PIRs have material impacts.

This chapter examines the nature of some of the key impacts on each of the individual sectors of the books market that flow from the PIRs, as a result of their protection of higher prices. Most participants in this study couched their views of

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the effects of the PIRs on the books industry in terms of what would happen were the restrictions removed, while some described the market impacts of the PIRs currently. In many respects these perspectives are just different sides of the same coin. However, in view of the approach adopted by most participants, this chapter examines the effects of the PIRs predominantly by exploring what might happen were they to be repealed.

## 5.1 Impacts on publishers

### Broad impacts

As publishers are responsible for bringing works to the market, the assistance to copyright holders is most visible as it relates to this part of the industry. The PIRs provide publishers with the certainty that they are the sole supplier of commercial quantities of a protected title to Australian booksellers. This enables them to set a recommended retail price (RRP) for a title, safe in the knowledge that cheaper (or better value) editions of the title cannot be imported in commercial quantities by Australian booksellers. Publishers still remain vulnerable to competition from different titles (whose rights, most often, are held by other publishers) and online sales. However, the certainty that their titles will not be undercut by competing editions, and the resultant returns, assists Australian publishers with their investment in author development, manuscript editing and marketing of books, and encourages firms to enter the publishing market.

Several participants commented on the benefits the current PIRs provided to Australian publishers and many, such as the Australian Publishers Association (sub. DR513) and Leading Edge Books (sub. DR388), focussed specifically on what they regarded as the additional benefits arising from the 1991 amendments. Scribe Publications said:

With territorial copyright guaranteed, a rights-buying culture emerged, and then a rights-selling one. Microscopic independent publishers became small and then medium-sized ones; new publishers emerged and flourished; multinational publishers beefed-up their local programmes; and independent booksellers retained their vitality and their market-share, at a time when their equivalents were (and are) being wiped out in the United States and the United Kingdom.

Seen in this context, the provisions *increased* competition. They forced rights-holders to either exercise their rights responsibly or lose them (a supply-side reform), and they gave booksellers competitive powers to access overseas titles that they'd never previously had (a demand-side reform) ...

Apart from the direct benefits to publishers and booksellers, local authors have gained more publishing choices and greater visibility; major writers' festivals have sprung up

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and strengthened around the country, often headlined or attended by foreign authors who otherwise wouldn't have been heard of here; and the local media are continually offered a rich fare of talent to review and interview. (sub. 122, pp. 3, 5–6)

As with many industries, the Australian publishing industry operates in a complex environment. Many other factors have affected the industry over time, including changes in demand, exchange rate fluctuations and technological change as well as changes in other government policies. As such, not all of the success of the Australian publishing industry can necessarily be attributed to the PIRs, or more specifically the 1991 reforms. For example, as Tim Winton noted (sub. 204), from an author's perspective, some growth began as early as the 1970s, when government assistance and a focus on local production, coupled with confidence in the industry and an outward-looking mindset, began to create an atmosphere that fostered the development of local authors.

Nonetheless, some insights into the nature of the effects on publishing that can be ascribed to the presence of the PIRs, as they are now configured, can be gained by examining what may happen if they were removed. As mentioned, many participants commented on the PIRs in these terms.

Across the publishing industry as a whole, the additional competition from overseas editions of books that would ensue from the removal of the PIRs could see some contraction in the overall output of the publishing industry, depending on the competitive response of local firms. Several participants commented on the possibility of such outcomes (see box 5.1). For example, Magabala Books said:

Surrendering our territorial copyright will result in an avalanche of cheap imports flooding the local market. Larger publishers will be forced to become mere distributors of UK and US titles rather than investing in the career of Australian authors, and small publishers like Magabala will be unable to compete with rising costs and decreasing sales. (sub. 188, p. 1)

There were also contrary views. For example, Peter Donoughue (sub. 8) — former managing director of John Wiley & Sons publishers — suggested that, in the absence of the restrictions, Australian rights to overseas titles would still be bought in similar volumes as now. And Hudson Publishing, commenting on the effects that followed the partial relaxation of the PIRs in 1991, stated:

The most striking thing about a retrospective look at the last round of changes is that neither the hopes of their promoters nor the worst fears of their opponents have been realised.

Whether the net result has been good or bad for Australia's economic and cultural life depends largely on the importance given to some pretty trivial adjustments. The major changes which have occurred have done so despite rather than because of the reforms. (Hudson Publishing, sub. 104, p. 7)

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### Box 5.1 Selected participants' views on the impacts on publishers

Many publishers provided substantial detail on the impacts of the restrictions and the potential impacts if they were removed. While the specific impacts would vary between publishers, examples of participants' views include:

The existing copyright arrangements are the key to the significant growth of the industry over the last twenty years. Without the certainty provided by the existing legislation, investment in the industry would be smaller, authors' incomes lower and the diversity of books available to consumers much reduced. (Allen & Unwin, sub. 214, p. 1)

Abolishing parallel import restrictions outright ... opens the risk of Australia becoming an international remainder bin; it diminishes authors' potential royalties; it reduces Australian publishers' ability to foster Australian writers; and it immediately shrinks the rights market in Australia. (Australian Publishers Association, sub. 244, p. 3)

Parallel importation will take away revenue from both publishers and writers, risk livelihoods of many Australian-owned service providers in the publishing industry and curtail export possibilities for Australian publishers. To put it simply, smaller Australian publishers could not survive in a completely deregulated environment. (Insight Publications, sub. 215, p. 3)

Once cheap foreign editions of books are widely available in Australia, it may encourage readers to buy these books rather than support Australian titles. This will have an immediate and direct impact on the financial viability of publishing emerging Australian authors. (University of Queensland Press, sub. 255, p. 1)

... a change in the [PIRs] can only create impediments to what is a vibrant and highly competitive local market for Australian content and innovative digital learning solutions. Neither students nor academia would benefit if restrictions were lifted and indeed our ability to locally support these customer groups may be seriously diminished. It could lead to a reduction in our investment locally ... It would also certainly affect our hundreds of authors as well as the myriad of freelancers which whom we partner and support through local publishing activities. (McGraw-Hill Australia, sub. 163, p. 3)

The 30/90 day rule serves the customer and the industry well. It provides educational publishers with a level of predictability to hold sensibly priced imported stock in local warehouses ... Under an "open market" ... resellers may cherry pick key textbooks to import whilst relying on us to supply the more obscure titles. The potential to compromise our economy of scale and our capacity to generate a surplus to reinvest into local publishing ... is clear. (Oxford University Press – Australia, sub. 42, p. 2)

It would be disingenuous to suggest that Hachette would not survive [any change to the PIRs]. It is large, and substantial enough to do so. However, lesser resourced publishers would not, and the retail landscape would be changed forever, with less authors published, publishers, independents and franchisees disappearing, such that the Australian Book industry, in its widest sense, would be diminished ... (Hachette Australia, sub. 232, p. 14)

In an open market, it's our contention that the publication of books by local authors would continue in the large publishing houses such as Penguin, Random House and Harper Collins, although there would be some defections by local authors to publishers in the northern hemisphere ... It is in the buying and selling of rights, however, where the problems begin. ... For [smaller publishers] such is their level of rights trading that if territorial copyright were removed, and the value of copyrights either bought or sold were thus severely reduced, that many of them would either cease to exist at worst, or at best survive in a crippled form. (Penguin Group (Australia), sub. 212, p. 9)

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Evidence provided by some major industry participants suggests that the abolition of the PIRs would be unlikely to lead to the elimination of the major share of the Australian publishing industry. For example, Hachette Australia submitted that, in addition to reductions in stock holdings, employment and orders with local printers, the removal of the PIRs would lead to a reduction of its sales ‘in the range of 10–15 per cent’ (sub. 232, p. 1).

More broadly, a Melbourne University survey (see chapter 2) found that, if the PIRs were removed, less than half of the over 50 respondent publishers felt that they would reduce their Australian output, although many expected their growth to slow. Overall, publishers’ expectations were found to shift ‘from strong positive to medium negative growth’ in the absence of the PIRs, with a contraction in the order of 10 per cent in Australian sales, exports and rights sales, and new Australian titles (Lee, Davis and Thompson 2009, pp. 49–50). Within these results, nearly 40 per cent of those surveyed indicated that they would reduce their annual output of new Australian titles, although less than half of these expected that they would reduce their output by more than 10 per cent.

That said, the survey results were affected by its limited, three year horizon (thus precluding consideration of any longer term adjustments within the industry) and, as the authors of the study cautioned, its timing, as most responses were received ‘before the full extent of the global financial crisis was clearly known’ (Lee, Davis and Thompson 2009, p. 49). As such, while these predictions provide guidance as to short term business expectations within the industry, they do not necessarily represent an accurate prediction of the long term adjustments that would take place in response to the repeal of the PIRs.

In this context, although there have already been some improvements in efficiencies in the industry — such as some rationalisation of distribution centres and the development of new technologies that make shorter print runs more cost-effective — previous experience in other sectors suggests that policies like PIRs, in cushioning the sector from adjustment pressures, may have blunted incentives to further improve productivity. Likely responses by the sector to the removal of the PIRs would include the generation of additional efficiencies (for example, in printing, marketing or distribution) and the development of new business models that could ameliorate the overall effects of a reduction in legislative assistance. The scope for such responses, however, is often not completely clear prior to reform.

Other activities that have had their parallel import protection removed — commercial music in Australia and book publishing in New Zealand — do not appear to have suffered major detriment following the removal of the PIRs. As discussed in appendix C, differences between these industries and the Australian books industry, and other factors affecting the performance of these sectors post-

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reform, mean that caution is required in seeking to draw definitive lessons from these case studies. Nevertheless, it is notable that, despite prior book industry warnings to the contrary, there was no contraction in publishing industry output in New Zealand following the removal of its PIRS in 1998.

### **Some specific impacts within the publishing industry**

Within the trade sector, many of the local arms of multi-national firms would likely remain in Australia, benefiting from existing trade relationships and the ability to develop local authors and tailor local editions to Australian preferences, as well as benefiting from the natural protection provided by the costs of freighting books from other countries. However, depending on the extent of the price effects flowing from the removal of the PIRs, at least one publisher advised that the role of the Australian offices of such firms would evolve into a model focussed more on distribution of imported books than independent publication.

There would be risks to some smaller Australian publishers, although these would depend on the nature of their business models. For example, the effects on the publishing of Australian-specific books could be limited — in the absence of the PIRs, there would still be demand for such titles amongst Australian readers:

Australians interest in their own country and literary accounts of it, do not stem from provisions of the Copyright Act. The popularity of Australian authored books is a result of demand for this product — Australians enjoy reading about Australian subjects ... Australian's demand for Australian authored books stems from our interest in local culture. (Coalition for Cheaper Books, sub. 218, p. 3)

Such demand for local work will also be present in the case of children's books to the extent that parents value Australian cultural content for their children and thus continue to purchase such books. Likewise, the purchasing policies of schools and public libraries should help to ensure that children are exposed to Australian children's books.<sup>1</sup> Similarly, histories, biographies or novels with distinctly Australian content would be less likely to face competition from overseas titles.

Conversely, the publication of locally authored titles that are less specifically 'Australian' could be exposed to greater competition insofar as those books face substitutes whose price may decrease in the absence of the PIRs. There is also a concern that any Australian-authored works for which overseas rights have been sold could face competition from imported copies (see section 5.2), which in turn

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<sup>1</sup> That said, Black Dog Books (pers. comm., 28 May 2009) argued that, with the removal of PIRs, parents and schools would choose to purchase cheap imported children's books, in preference to Australian children's books. The potential cultural and educational benefits of such books are discussed in chapter 6.

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could affect their prospects for local publication. However, the Commission notes that in the order of 70 per cent of Australian-authored trade works do not have export editions (appendix E). For those with export editions, any threat of re-importation could be ameliorated to some extent, depending on the competitive response of Australian authors and publishers, including on whether world rights to particular books are sold to Australian publishers (allowing them to better control the distribution of those books), or whether separate rights were sold to overseas markets and the timing of those sales.

Publishing models that rely on the acquisition of local publication rights from foreign copyright holders would be the most exposed to increased competition. Some participants felt that such models provide value to the books market overall, and that the current PIRs are instrumental in encouraging them:

Trading in rights — buying and selling — is critical to any modern publishing industry ... This activity can only happen with territorial copyright ... The benefits of buying Australian territorial rights from foreign writers to publish here are also widespread ...

The mix of foreign and local writers on a publishing list is as critically important to the cultural health of that list as is the mix of foreign and local authors in a bookstore. Buying rights introduces writers and ideas into a culture in a more active and engaged way than mere book distribution could ever do. (Text Publishing, sub. 63, pp. 12–13)

Accordingly, some industry participants advised that abolition of the PIRs would have a significant impact on the local publication of overseas works. For example, Black Inc stated that:

If parallel importing were to be allowed, publishers in Australia would not be able to feasibly buy rights for Australian publication. If retailers and distributors had the right to import copies of the book, to ride on the back of the publisher's publicity campaign, they would take significant sales from the publisher's edition and make local publication an impossible commercial risk. (sub. 113, p. 2)

However, some foreign-authored titles are already published in Australia without formal PIR protection, and the Commission understands that the operation of the relationship between publishers and booksellers plays a part in sustaining this practice (see section 5.4). In essence, by using their overall power and existing market relationships, combined with booksellers' desires to avoid inadvertent breaches of exclusive rights, Australian publishers can 'encourage' booksellers to source these titles locally. Larger publishers, in particular, are well positioned to leverage this relationship from their wide publishing lists, especially where they include highly popular books. The upshot appears to be a 'silent policeman' effect, wherein booksellers are inclined to treat books that are not PIR-protected as if they are.

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While the power relationship between local publishers and booksellers would change somewhat were the PIRs removed, the value of local supply relationships to booksellers could add to the natural protection of distance from foreign markets to provide a price margin for local publishers facing prospective competition from foreign editions.

### *Risk portfolios*

Some participants argued that the high returns from rights sales and/or the publication of overseas works provide funds that are necessary for publishers to be able to support Australian authors:

The revenue made from rights trading by these companies allows them to invest in the development of Australian authors, to hire and train editors and publicity staff, to contribute mightily to the country's culture. (Penguin Group (Australia), sub. 212, p. 9)

Underpinning the investment in our Australian publishing is the income generated from sales of international books. An open market will directly jeopardise the sales of these titles, which will lead to a reduced investment in Australian publishing ... (HarperCollins Publishers Australia, sub. 269, p. 4)

Such practices do not necessarily represent cross-subsidisation in an economic sense, but they do provide economies of scale and scope for publishers to be able to invest across the various facets of their business, including in Australian-authored works. In this context, as discussed in chapter 2, publishers take on new authors as part of a portfolio of risk. As the Australian Publishers Association noted, '[i]t is sensibly not assumed that all individual products will be profitable, but rather that the portfolio overall ... will be' (sub. 244, p. 6). Any reduction in the overall value of the rights held by a publisher would lead to a reconsideration of the appropriate mix in the portfolio, including a reduction of holdings of 'riskier' rights. This might mean less opportunity for some Australian authors. However, the result will necessarily depend on the precise portfolio and judgement of each publisher. For some publishers, it may be the case that cross-subsidisation is not strictly necessary to maintain particular components of their business. For example, HarperCollins said that it 'does not substantially cross subsidise between imported and local books' (sub. DR450, p. 3).

Further, as noted in chapter 6, some have cast doubt on the degree to which additional returns are in fact used to support new or riskier Australian authors.

### *Marketing and promotion*

Were there an overall contraction in trade publishing activity, and with the availability of competing overseas editions, publishers might reduce their marketing

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and promotion effort due to a risk that others might reap the benefits of their efforts. As Allen & Unwin noted:

Much of this demand creation and collaboration would vanish should parallel importation of books be allowed, as the uncertainty over who would benefit most from the marketing and promotional activity would create a disincentive for investment. (sub. 214, p. 3)

However, the ACCC argued that such ‘free riding’ would merely place books in the same situation as many other products:

While free riding may occur in the sphere of distribution — for example, on marketing and promotional investments or on pre- and after sales service — this is nothing unique to, nor a necessary feature of, intellectual property. Rather it is a feature which may occur in any market to a greater or lesser degree ... (sub. 260, p. 8)

In New Zealand following the removal of PIRs in 1998, there was no observable impact on the promotion of local titles, although some publishers felt that parallel imports may have constrained further growth in promotion (see appendix C).

In Australia, while marketing overall might be lower without the PIRs, the impact on the marketing of Australian authors may well be moderate in comparison. Given the additional expense of funding tours by overseas authors, as well as the greater likelihood of the presence of competing editions of their books, Australian authors generally should become a relatively more attractive focus for marketing activities.

#### *Australian educational publishing and the bundling of study and teaching aids*

While many of the impacts on trade publishers would also be felt by education publishers, there would be some aspects specific to this sector.

In relation to the schools market, local curriculum setting will have a dominant effect on the demand for local titles. Indeed, John Wiley & Sons Australia noted that its school books business would not face any substantial competition from imports, and as such would not be impacted by any change to the PIRs:

... all of our revenue is derived from the sale of titles (print and digital) that we create and publish in Australia for the Australian market, and we export only minimal amounts of these titles. (sub. DR502, p. 2)

At the same time, Cengage Learning Australia noted that, in relation to literacy books targeted for primary school consumption, there was ‘... a long history of successful export of Australian developed content throughout the world by separate versioning to suit local conditions overseas or by licensing for other languages and co-editions.’ (sub. 52, p. 5)

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In the tertiary books sector, the timing and reliability of supply before the commencement of each semester is of particular importance to sellers of textbooks. As such, the ability of Australian publishers to provide reliable and fast supplies of textbooks may continue to give them an advantage over overseas suppliers even in the absence of the PIRs:

With the fluctuation of student enrolment numbers it is often necessary for ‘top-up’ orders to be placed. Supply within a parallel importation environment may see additional costs from things such as airfreight surcharge and delays in back-order delivery times. (University Co-operative Bookshop Limited, sub. 216, p. 5)

A notable feature of educational publishing is the modification of the content of overseas works, to provide local contextual examples for students. If overseas textbooks are available that are both cheaper and at least as effective for coursework purposes, local publishers would indeed be less likely to invest in local versions, unless the local content is deemed to provide sufficient value in the marketplace to justify the additional cost. In this context, Australian curriculum setting may require the use of particular textbooks, including those with specific Australian content. This would moderate the use of imported texts to some extent, although this would vary from subject to subject.

Several education publishers indicated that, in the absence of the PIRs, they might cease offering — or start charging for — the study and teaching aids they currently include with their products:

... the printed textbook currently generates the revenue and core publishing business profit. But for both of these sectors, CLA (as do our local peers) provide considerably more to win and maintain adoptions — teacher materials, lesson plans, dedicated website of extra material for each textbook, interactive learning objects, downloadable templates, up-to-date weblinks for further research and similar. ... There is no incentive for importers of just the textbook separately to develop, maintain and promote all the important ancillary resources and learning aids a local publisher offers and willingly invests in. (Cengage Learning Australia, sub. 52, p. 2)

Without the revenue from the sale of the associated textbooks, Pearson would have to reduce or withdraw instructor support. And without these valuable and often sophisticated learning materials, the quality of many courses would decline. (Pearson Australia, sub. 119, p. 2)

Such support is clearly helpful for teachers and students, but its provision as part of a ‘bundle’ does not allow the market to test whether the benefits of the study and teaching aids justify their cost. That is, there is little or no scope for the purchasers (that is, the students) to choose between texts with or without the auxiliary materials, and auxiliary materials with or without texts. To the extent that they are valued sufficiently by users (including course presenters), competition in the marketplace would be expected to manifest in the development of a separate market for these auxiliary materials.

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Some educational publishers took issue with such treatment of supplementary materials in the discussion draft (see box 5.2). Pearson Australia also contended that such competition could create ‘confusion’ amongst students, but acknowledged that they would likely select overseas editions if they were cheaper:

Students will no doubt be attracted to the offer of cheaper books. But the Asian import they purchase may not be the right edition, or may not contain the right CD, or access to digital content. (sub. DR528, p. 2)

The Commission does not regard such concerns, to the extent that they are valid, as major considerations relative to the benefits that an open market could bring. In an open market, students (and booksellers) could choose from a range of editions of texts with varying degrees of auxiliary material. Where students regard auxiliary materials as providing sufficient value to justify a higher price than ‘stripped back’ overseas editions, the Australian edition will have more appeal. But where the auxiliary materials are regarded as poor value for money, many students — who are typically budget conscious — could well choose the overseas editions.

Likewise, in terms of teaching aids, the Commission recognises that an open market could lead to a contraction in support materials provided to lecturers by publishers. However, publishers would still be able to include these materials as part of their offering during the process of being selected as prescribed texts. Publishers could also potentially charge universities separately for teaching aids. This would mean that, where the material is deemed to offer value, universities could need to bear the cost themselves, rather than dispersing it through higher text book prices.

#### **Box 5.2 ‘Bundling’ in the provision of auxiliary materials for texts**

In response to the discussion draft, John Wiley & Sons Australia argued that auxiliary materials were not ‘something that is in a bundle that students buy. There are no costs to students for teaching aids’ (sub. DR502, p. 8). Nonetheless, they acknowledged that the students bear the cost of developing the materials, regardless of whether they want or use them:

The commissioning, editing and compilation of this material is paid for by the publisher. Publishers spend money organising video ... they pay other academics to write up questions and answers around the video ... This all can cost a lot of money. It is true that ultimately all of this cost is reflected in the price of the text ... [which] is the same price whether lecturers utilise the resource or not. (sub. DR502, p. 8)

Others accepted that the materials were bundled with text books, but questioned whether a separate market for them would develop in the absence of the PIRs:

The delivery of the textbook, the integrated ‘teaching aid’ package, and product in-service to students are all part of the service provided to academics and students, by publishers and booksellers. They are by definition designed to be delivered and supported in an integrated fashion. The suggestion that they can be unbundled and sold separately does not understand how they work. (Pearson Australia, sub. DR528, p. 3)

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## *Dynamic impacts*

While the above discussion assesses some of the possible impacts that the removal of the PIRs could have on firms within the publishing industry, it is also important to consider what might happen over the longer term. As the Coalition for Cheaper Books argued, in light of the competitive pressures arising from the availability of alternative supply sources, publishers would likely pursue further efficiencies as they would be:

... forced to re-evaluate the way they do business in this market. As was the case in New Zealand, it will be likely to lead to improved customer service, more timely publishing of new books and better stock-holding, knowing that the bookseller has alternatives if they do not. (sub. 218, p. 17)

As a result of re-evaluating their business models, some firms might exit the industry, some might contract their operations, and others might seek new efficiencies or models of business to adjust to their new operating environments. Evidence provided by participants suggests that there is scope for improved efficiencies, particularly in the distribution of books. For example, both Collins Booksellers (sub. 230, p. 5) and John Wiley & Sons Australia (sub. 169, p. 1) pointed to inefficient distribution arrangements. Similarly, the Coalition for Cheaper Books commented that, due to the current PIRs:

Consolidated picking, delivery and invoicing to retailers cannot occur if there are no wholesalers to consolidate books for all publishers and distribute them in one delivery to the retailer. This means the extraordinarily inefficient, expensive and labour intensive supply chain for Australian books will continue with a separate truck and invoice from each publishers' warehouse instead of one truck carrying one delivery and invoice from a wholesaler. (sub. DR509, p. 15)

New entrants might also come into the market in response to a changed operating environment, potentially changing the nature and composition of the publishing industry. Such developments would mitigate the impact of increased competition from overseas editions, and provide consumers with more competitive and better value for money products.

## **5.2 Impacts on authors**

Due to their protection of higher prices, the PIRs assist authors by increasing the value of their copyright. As they are inextricably linked, authors will also be affected by any impacts on publishers (as set out above).

As with publishers, the impacts of any change to the PIRs on authors would also vary (see box 5.3 for a selection of participants' views).

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### Box 5.3 Selected participants' views on the impacts on authors

In submissions, many authors provided examples of how they felt the current PIRs had benefited them, or how the potential removal of the restrictions might impact on them:

I can foresee no circumstance in which a sale of a parallel-imported edition of a book of mine would earn me the same as a sale of a local edition. Allowing parallel imports will undermine author's incomes ... [further] Parallel imported copies undercutting the local edition could destroy the local market for that edition and send the book out of print ... Both the author and the publishing company here ... would suffer. This risk would be a serious disincentive towards Australian publishers publishing new Australian books, and unearthing new talent. (Nick Earls, sub. 17, pp. 8–9)

I believe that the risk is that projected changes will lead to our publishing industry producing primarily books for the local market; as few authors would be able to make a living in this way, an author's choice would be to aim at having an overseas publisher as one's primary publisher. (Wendy Orr, sub. 56, p. 1)

[In an open market] Australian authors such as myself with international readerships could find themselves with no choice but to sign directly with US and UK publishers, and see their books exported into Australia as foreign editions, with foreign covers and in the case of American editions, foreign spelling and vocabulary. (Monica McInerney, sub. 79, p. 2)

... territorial copyright provides publishers with certainty to allow them to invest in Australian authors and Australian books. Without that certainty, the business case to invest in and publish Australian books is far weaker and consequently the opportunities for Australian authors to begin here would be fewer. (Garth Nix, sub. 102, p. 7)

The economic well-being of Australian authors and publishers will be put at great risk if changes are made to the current system. Globalisation of these practitioners will force them to sink or swim along with everyone else, in a kind of homogenised mid-Atlantic literary soup. With a few notable bestselling exceptions, ... [this] will reduce writing and publishing truly Australian books to a hobby. (Janette Dalgliesh, sub. 152, p. 1)

[Those who write for the Australian market ] would still be published here of course, but I fear it will be without the resources of marketing, distribution and visibility which the existing Australian publishing industry is able to provide to a wide range of such books under the guarantee of Australian copyright based on PIR ... Both authors and literary agents, particularly those whose interest is explicitly Australian, would be facing shrinking resources and contracts. (Thomas Keneally, sub. 16, p. 4)

Publication of an unknown author/illustrator is a risky business. Publishers on tight budgets are naturally very cautious about investing money and time on creators who will be initially hard to sell into bookshops. Publishers who have been impoverished by unfair competition in their own marketplace, while being prevented by foreign laws from entering others, and who have perhaps lost their most successful creators to overseas companies, will be even less inclined to take the risk. As fewer young creators are nurtured, what is now a vibrant culture will gradually die. (Jennifer Rowe, sub. 250, p. 2)

With increased competition from imported books local publishers will be less likely to take on 'new talent', significantly diminishing the number and range of creators who will ultimately work within the publishing industry and 'speak' to our children. (Amanda Graham, sub. 253, p. 1)

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Authors of Australian-specific content are likely to be somewhat insulated from any contractions in publishing as there would still be demand for such books. However, any price reductions on imported titles would place some downward pressure on the market as a whole and there would likely be a reduction in publishing activity, as noted in section 5.1.

To the extent that removal of PIRs resulted in lower prices that were not sufficiently offset by greater sales, authors would face reductions in their income. Lower RRP in the domestic market would translate into lower unit royalty payments. Authors would also receive lower ‘export royalties’ on any copies of their books that were imported into Australia from overseas. Further, given that copies of books sold as remainders generally return no specific royalties for Australian authors (box 5.4), any importation of remainders that displaced rather than supplemented existing sales would reduce the total income earned from the books concerned.

#### **Box 5.4    Remainders and authors’ royalties**

Remaindering is a standard part of most author-publisher contracts and is one way that publishers and authors share the risk that a particular title may not sell out, leaving the publisher (where ‘sale or return’ terms have been offered) with excess stocks to dispose of. In the absence of a remaindering option, publishers would face extra risks, and it is likely that publishers would be less willing to agree to other terms in a contract with authors, or would need to set a lower standard royalty rate to cover the shortfall. In this sense, authors royalties can be seen as including a component for the value of remaindered copies of their works.

Even so, a number of participants expressed concern about the potential for the parallel importation of remainders to undermine authors’ royalties. Authors typically do not receive royalties on remainders. Thus, were an imported remainder of a foreign edition to displace a sale of a (non-remaindered) local edition, the author would lose the royalty on that sale.

Australian authors typically receive 10 per cent of the RRP of books sold in Australia. Thus, were the book in the example (in chapter 4) cited by Spinifex Press an Australian-authored book being sold at its RRP of \$24.95, the importation and sale of the remaindered foreign edition would result in a loss in royalties to the Australian author of around \$2.50 — assuming that the sale displaced another sale of the work. (In comparison, the Australian consumer in that example would save over \$20 — that is, the consumer would need to pay only the small price (\$3 in the Spinifex Press example) for the parallel import, rather than the \$24.95 price of the Australian edition).

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Moreover, some new or undiscovered authors could find it more difficult to gain attention in an open market, particularly if there were a contraction in Australian publishing. As Andy Griffiths noted:

A situation in which restrictions were lifted would correspondingly make it even harder for new local authors to begin the crucial audience-building process given the lower returns that local publishing houses could expect to make given the relative cheapness of titles from established authors such as myself and/or if their fledgling author was fortunate ... enough to be signed by an overseas publisher and had to compete against themselves. (sub. 164, p. 2)

Many authors also felt that in the absence of PIRs, they would ‘lose control’ over the sales of their books. Once the rights to books are sold overseas, authors would no longer be able to control which edition of the book is sold — or remaindered — in Australia, potentially impacting on their returns. As noted earlier, however, the bulk of Australian-authored titles do not have foreign editions (appendix E), and thus would not face competition from such editions in the domestic market. And for those Australian-authored titles with foreign editions, the availability of remainders for parallel importation from abroad would in part depend on the strategy adopted for foreign rights sales. Tim Winton advised that:

... it would mean that it would no longer be possible for Australian writers such as myself or Peter Carey, et al, to publish simultaneously at home and abroad. We would be returned to the days when our books appeared elsewhere many months after they were published in Australia. This is because we’d need to shield our domestic publishers from dumping by a form of enforced staggered release. (sub. 204, p. 13)

Peter Donohue (sub. DR273, p. 3) indicated that it is also plausible that, over time, international publishing contracts might adjust to allow, among other things, Australian authors or publishers the first option to ‘buy-back’ remaindered titles by Australian authors.<sup>2</sup> They would then have the opportunity to calculate whether the benefit of purchasing these remaindered copies exceeded the cost of having those books potentially compete with their Australian editions. (Non-remaindering and buy-back clauses already exist in some publishing contracts, although Hachette Australia (sub. DR480, p. 3) argued that while a US publisher was unlikely to remainder a title by a high-selling ‘brand’ author, generic books and those by non-brand authors (including Australian authors with export editions) would be more susceptible to being remaindered rather than pulped.)

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<sup>2</sup> A related issue is whether some of these contracts, in agreeing to restrict the availability of books at remaindered prices, breach the prohibitions on anti-competitive conduct in *Trade Practices Act (TPA) 1974*. As noted in the Commission’s discussion draft, s51(3) of the TPA operates as an exception to the prohibitions in relation to collusive conduct (s45), exclusive dealing (s47) and acquisitions (s50). This helps to reconcile the conflict between the exclusive monopoly rights granted under the *Copyright Act 1968*, and the general presumption against anti-competitive conduct in the TPA.

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However, contractual provisions aimed at restricting imports would not necessarily prevent overseas publishers from dealing with wholesalers in their own jurisdiction. The provisions could thus be circumvented by wholesalers importing copies of the books into Australia. While the circumvention, or even unintentional breach, of these contractual provisions may be simple, local publishers may be able to use non-contractual means — such as ‘naming and shaming’ (Peter Donoughue, sub. DR273, p. 3) — to mitigate the long-term impact of such activities.

Another aspect of the loss of authorial control relates to the editorial changes that overseas publishers may make to Australian works, such as differences in language or settings. As Leading Edge Books noted:

The other significant issue highlighted by the authors ... was editorial integrity. All recounted examples of frequently being asked to change Australian idiom by their overseas publishers in order to satisfy that market. They were very concerned about the ‘global dilution’ of their distinctively Australian voices should they no longer be able to control which editions of their books are for general sale in Australia. (sub. 254, p. 3)

Participants largely raised these concerns in the context of potential damage to Australian culture, and as such they are discussed in chapter 6.

### **5.3 Impact on printers**

The Australian printing industry was a particular beneficiary of the introduction of the 30 day rule in 1991. The impetus to publish locally within 30 days of the overseas release of a title meant that:

Book publishers started placing more of their book orders onshore to meet the requirements of the 30 day rule. (Printing Industries Association of Australia, sub. 106, p. 6)

UK publishers started to use Griffin Press to comply with the 30-day rule. They soon found that printing in Australia produced other supply chain benefits. These included reduced stock write-offs and faster availability of reprints to meet retail demand, which helped their sell-through, improved profitability and ensured continuing availability for consumers. (Griffin Press, sub. 205, p. 5)

As such, the 30 day rule effectively created some demand for Australian printers, despite somewhat higher per unit printing costs that would otherwise have encouraged the use of foreign printers (see, for example, Working Title Press, sub. 143). This was confirmed by the ACCC in its 2007 determination regarding the proposed joint venture between Griffin Press and McPherson’s printing division:

Most publishers said that it is almost always impossible to print offshore or import directly and still meet the 30 day requirement (except with airfreight, which is not cost-effective). Reasons for this included the time lapse between Australian release and

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overseas publication which generally does not allow enough time for an Australian rights holder to print overseas and transport the books and still have the books supplied to the public within 30 days. (ACCC 2007, p. 8)

Several participants argued that, given an increase in production following the introduction of the 30 day rule, it is to be expected that the repeal of the PIRs would lead to some contraction in activity (see box 5.5).

While the 30 day rule has contributed to the growth of the printing industry, it is difficult to ascertain its exact impact, especially in light of the passage of time since the changes, and a number of factors impinging on the printing choice by publishers. As part of its 1996 report on Book Printing in Australia, the Industry Commission commented that, while the 30 day rule played a role:

... the bulk of market growth has been due to other factors. These include a switch in the composition of demand towards mono-colour paperbacks, an area of book printing in which Australian printers have an advantage. Technological changes also have improved competitiveness of Australian book printers. (IC 1996, p. 65)

Indeed, technological change has been a feature of the printing industry in recent times. In this light, advances that make small print runs more cost-effective have given larger publishers greater flexibility in ordering, as well as making print runs more achievable for smaller publishers or niche books. There has also been a shift to digital print files, which facilitate the global transfer of documents. According to McPherson's Printing (sub.168, p.4), the combination of these advances is expected to:

- allow cost-effective printing of back list titles
- facilitate 'print on demand' models, reducing waste associated with unsold books
- reduce barriers to entry for new publishers and further globalise printing processes.

Additionally, local relationships with publishers — particularly in relation to the ability to print and deliver runs at an affordable price and at short notice — provide an advantage for the local printing industry, even if it were faced with increased competition from overseas printers. Lower freight costs are another advantage. As the Victorian Government stated, these advantages would remain even in the absence of the PIRs:

Shipping costs, the ability of Australian printers to deliver books more quickly than international printers and the ability to cost effectively produce smaller, more frequent print runs are all incentives for publishers to print books in Australia. These factors would not be impacted by changes to parallel import restrictions. (sub. 270, p. 5)

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### Box 5.5 Selected participants' views on the impact on printers

Many participants commented on the impact that the potential removal of the PIRs would have on the printing industry in Australia. Examples of their views include:

Based on industry feedback, *Printing Industries* projections point to the loss of [a] significant number of jobs in regional centres, with the impact not just limited to book printing, but also associated industries such as paper manufacturers and suppliers, inks and other consumable suppliers, pre press companies, post press companies such as book binders and local transport companies are all expected to experience reduced activity. Again, based on industry feedback, the abolition of the 30 day rule may result in a loss of book production work of \$70 million to \$80 million. This equates to between \$26 million to \$30 million in loss of paper production. (Printing Industries Association of Australia, sub. 106, p. 7)

Specific to Griffin Press, the abolition of the parallel import regime would create a massive disincentive to the printing in Australia of new overseas titles. This comprises almost half of Griffin Press' business. If orders received by Griffin Press were reduced by as little as 30%, Griffin Press ceases to be viable, which in turn would mean:

- PMP's overall operations in South Australia cease to be viable;
- At least 250 South Australian jobs with PMP would be lost, with a domino effect on major suppliers, especially Protectaprint;
- an end to Griffin Press' personnel training program and its project to develop Australian and New Zealand sources for paper requirements ... (Griffin Press, sub. 205, pp. 6–7)

Clearly, weakening or removal of the 30 day rule can only reduce the number of books printed in Australia in lieu of imported product. Examination of the Government's previous book bounty statistics prior to and subsequent to 1991 provides ample evidence of the lift in local production which followed introduction of the 30 day rule in that year. (McPherson's Printing, sub. 168, p. 3)

The Victorian Government is concerned that if parallel import restrictions were removed local publishers could have less incentive to print books in Australia or to produce Australian editions of overseas books as frequently as they are currently producing. This would likely result in less book printing in Maryborough. (Victorian Government, sub. 270, p. 6)

The impact of the introduction of parallel importation of books would be felt fiscally upon Ligare and the supply chain to which it contributes. We estimate that over 26% of our revenue would be wiped out within 12 months; this would in turn cause the redundancy of at least 26 full time staff. The supply chain would also be affected – paper is approximately 30% of the cost of our services and other external supplies account for another 15% including transport. (Ligare, sub. 76, p. 5)

As such, while the Australian printing industry would likely contract without the PIRs, the local advantages enjoyed by Australian firms would serve to limit this effect. Indeed, as McPherson's Printing submitted:

The extent of reduction in volumes which would follow removal of the 30 day rule is not able to be precisely predicted. However, based on the history following introduction of the rule in 1991 and the current market dynamics, a minimum reduction of 10% in MPG's book volumes would be certain with a longer term reduction of 20% or more likely. (sub. 168, p. 3)

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The Commission notes that the impacts of any contraction in the printing industry could be more acutely felt were they to occur in areas where printing represents a large proportion of industrial activity:

... if a relaxation of parallel import restrictions were to lead to decline in the number of books printed in Maryborough, this would result in a loss of jobs and could ultimately place the plant at risk. Given the economic conditions in the Maryborough region, this could have significant flow on effects on the community, particularly in the current environment. (Victorian Government, sub. 270, p. 6)

These impacts are quite serious with the significant reduction in MPG's employment in Maryborough likely to translate into an increase in long term unemployed in this regional economy. It is also clear that such reductions in financial returns could bring into doubt longer term investment viability. (McPherson's Printing, sub. 168, p. 3)

However, the PIRs were not designed to operate as a regional support mechanism, and dedicated, targeted policy instruments would be more effective and efficient.

#### *Impact on printing costs*

Beyond the direct impact on the printing industry, several participants expressed concerns that any contraction may increase costs to local publishers. These participants noted the ACCC's determination to prevent McPherson and Griffin printers from merging, on the basis that it may lead to higher printing prices:

The ACCC blocked the merger on the grounds that it would stifle competition. The consequences for books if we lose a printer would be bleak. As the ACCC observed, the absence of competition among printers 'will likely lead to higher book printing prices (or lower service conditions) for publishers, and, ultimately consumers'. More expensive print prices would mean fewer and dearer books, fewer authors published, fewer innovative publishers, less choice for consumers. (Text Publishing, sub. 63, p. 21)

Importantly, however, the ACCC's argument was not so much that the actual *unit costs* of printing would rise were the two major major printers to merge. Indeed, greater scope to reap economies of scale, which would reduce unit printing costs, was presumably one of the reasons for the proposed merger. Rather the ACCC's concern was that given the existence of the 30 day rule, which provided a compulsion for time-sensitive publishers to get books printed locally to secure PIR protection, import competition would not sufficiently constrain a single large local printer from exercising market power in setting printing prices. Specifically, the ACCC said:

... a large enough proportion of current domestic printing may be regarded as time sensitive such as to limit the constraint provided by offshore printing. (ACCC 2007, p. 10)

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Conversely, in the absence of the 30 day rule and the PIRs generally, it is likely that overseas printed books would provide significant competition to local printers. While not disputing this point, in its response to the discussion draft, McPherson's Printing argued that:

The Commission's suggestion that competition from overseas printed books would constrain the ability for local printers to lift unit prices in response to lower volumes fails to recognise the necessity for printers to do so in order to survive. (sub. DR367, p. 3)

However, if local printers attempted to increase their prices relative to those available abroad, publishers could either source their printing from overseas firms or indeed import copies of the books from overseas markets. Thus, an open market would constrain the ability of printers to increase prices to domestic publishers, and, in the Commission's view, be unlikely to lead to higher printing costs for local publishers. And to the extent that reduced throughput led to higher unit costs for existing Australian printers, the competition concerns related to the 30 day rule that recently precluded a merger between the two largest printers would presumably no longer be an issue.

## **5.4 Impact on booksellers**

Where a book has PIR protection in Australia, booksellers are required to source their retail stock of the book from the domestic publisher (or distributor), regardless of the availability and relative price of any foreign edition of the book. While booksellers are able to choose which titles they stock, for titles in high demand this requirement can represent a sizeable constraint on the bookseller, both in terms of the price and number of copies they are able to sell.

The most direct impact on booksellers of the potential removal of the PIRs would be the availability of alternative supply options. As the Australian Booksellers Association observed:

Alternative distribution channels through American, UK and European wholesalers are a viable alternative for many booksellers who will be able to build more sustainable volumes and hence lower freight through importing either individually or via aggregation. (sub. 172, p. 7)

It is difficult to predict the exact degree to which booksellers would increase their sourcing of imported books. As occurred in New Zealand, it may be the case that booksellers largely continue to order through domestic publishers:

It is likely booksellers will continue to buy the majority of their stock from local publishers and distributors if their prices, service and stockholding is competitive. It is simply easier to do so. (Coalition for Cheaper Books, sub. 218, p. 16)

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As such, were PIRs removed, the greatest impact on booksellers might not come from the *actual* degree to which they shift away from domestic publishers, but rather from their ability to make a *choice* to shift to overseas suppliers if they were unsatisfied with local sources. The availability of such options would increase the pressure upon publishers to offer competitive prices and conditions, providing the spur for greater efficiencies in domestic publishing and distribution.

In this context, the current PIR regime increases the scope for publishers with market power to engage in practices that, while maximising their own returns, in some cases may be detrimental to booksellers, and indeed consumers. Such practices include manipulating the price and terms of supply of their books to encourage booksellers to source all their stock locally, even where books are not strictly PIR-protected (box 5.6). To the extent that this presently occurs in practice, removal of the PIRs would allow booksellers to source the books from overseas suppliers, thus avoiding any conditions of supply that they felt were unfair and encouraging better service from local publishers.

### **Trade booksellers**

The exact impact of the removal of PIRs would vary across different types of booksellers. Currently, ‘discount department stores’ (DDSs) apply some downward pressure on prices in the segments that they choose to stock — mainly front list ‘bestsellers’, as well as a selection of children’s, cooking and lifestyle books. Most of their books are offered at a substantial discount from the RRP. Without the PIRs, such stores could use their purchasing power to source large volumes of overseas stock directly from US or UK wholesalers or publishers or from other sources. However, from the Commission’s consultations, it is apparent that some in that sector of the market currently consider that their relations with local publishers, the continuity of supply that they offer, as well as the value of ‘sale or return’ conditions, would mean that they would continue to source the majority of their stock locally — at least, unless and until any moves by competitors to source from abroad forced them to follow suit.

Chain booksellers would also have the opportunity to use their purchasing power and supply networks to source considerable numbers of books from overseas suppliers, and yet would have similar incentives to the DDSs to continue to source stock locally.

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### Box 5.6 The PIRs and the use of market power

The PIRs increase the scope for publishers to use market power for their benefit, but to the detriment of others. Particularly where there is substantial market demand for a particular book and the Australian publisher has parallel import protection for the book (ensuring that booksellers must deal with them if they wish to obtain that book), the publisher may be able to, among other things:

- manipulate the price of the book (by arbitrarily adjusting the discount to booksellers)
- disadvantage particular sellers by limiting sales support or requiring particular credit conditions
- limit or refuse supply of the book to particular stores, hampering their ability to compete with rivals.

Following the release of the discussion draft, the Commission received confidential evidence from several parties indicating that publishers have engaged in such activities. Further, pressure has been applied even when books are not strictly PIR-protected; that is, where they are first published in Australia more than 30 days after their overseas publication. For example, Kinokuniya Bookstores of Australia submitted a list of selected authors:

... whose books Kinokuniya have discovered and imported when they were not published within 30 days. Interestingly, when the titles were then published in Australia some pressure was placed on Kinokuniya to stop importing the U.S. editions, which were cheaper. (sub. DR288, p. 2)

(Kinokuniya also provided the Commission with documentation from a supplier that demonstrated this pressure.)

Effectively, publishers are able to leverage any of the sanctions noted above onto unprotected books by taking a bookstore's overall support of publishers' lists into account when determining conditions of supply (including discounts and promotional spending such as author events) on protected books. As such, while not all popular new releases have legally protected Australian versions, this use of market power by publishers provides incentive for booksellers to obtain their supplies locally, even where the books are available at lower prices overseas.

Without PIRs, were booksellers to freight in large shipments of books from overseas suppliers (or obtain sharper prices from local publishers), this could improve the competitiveness of local 'bricks and mortar' retail stores against large overseas-based online sellers, such as Amazon. That said, participants expressed differing views on the role that such sellers play in the current market, or could play in an open market (see box 5.7). It is apparent that one component of the demand for online sellers is their ability to stock a wide range of titles, enabling consumers to find rare or niche books. In relation to more mainstream books, while some consumers prefer to buy books online, others value the experience of shopping in 'bricks and mortar' stores. Importantly, the price competitiveness of overseas-based online stores will fluctuate over time, depending on the exchange rate.

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### **Box 5.7 Selected participants' views on the role of online sellers**

Participants expressed a variety of views on the role of online sellers in the Australian books market. Some felt that Amazon represents a threat to Australian booksellers:

Because the wholesale price of books is artificially high, booksellers lose market share to Amazon. To attempt to address this they must price some books at a retail loss. ... Were the publisher in this case subjected to open market competition the wholesale price would likely be reduced leading to even cheaper books for the customer than can be provided by Amazon. (Coalition for Cheaper Books, sub. 218, p. 4)

That Australians choose to purchase from an Australian web retailer over sites such as Amazon is interesting; there is obviously concern among the book buying public of Australia to support local companies and jobs. ... [The abolition of the PIRs] could open the way for companies like Amazon to set up a warehouse in Australia and with their aggressive pricing and marketing power and the quicker delivery time it could impact detrimentally on the Australian bookselling industry. (Ligare, sub. 76, p. 2)

Arguments have been made that the competitive advantage given to overseas retailers by the absence of a consumption tax on their sales is offset by freight cost considerations. We strongly reject these arguments as freight costs can be offset by multiple purchases, and our nascent online book industry competes with none of these advantages. (Australian Booksellers Association, sub. 172, p. 3)

Others felt that it is not a significant competitor:

To order from Amazon presents costs to Australian readers above and beyond the stated retail price of the book, including freight costs and delays, and requires faith that the book will arrive in an adequate edition ... because of the different circumstances of purchase, Amazon is not a significant competitor to the core business of Australian booksellers in novels or popular non-fiction books. (Australian Publishers Association, sub. 244, p. 33)

... I know that I only ever buy books through Amazon if I cannot obtain them in Australia. If it is a foreign book but published here, I buy it here, because postage and conversion rates are often a factor. I never buy books by Australian writers on Amazon, unless the said book is out of print and only available secondhand. (Sophie Masson, sub. 72, p. 2)

There was also a variety of opinions on the role that the PIRs play in relation to Amazon:

The loss of custom to overseas internet sales does not seem to bear any relationship to copyright restrictions and is more a factor of the vastly different cost, distribution and discount structure of Amazon.com which also benefits from not having to charge GST on all sales. (Leading Edge Books, sub. 254, p. 9)

... regardless of the current importation restrictions, any Australian consumers with an internet connection have for some time been able to access these cheaper books via book suppliers such as Amazon.com (and Amazon.co.uk). The restrictions upon parallel importation simply have the result of excluding Australians who are less 'internet savvy' from obtaining more competitively priced books, and putting Australian brick-and-mortar book sellers in a less competitive position than online UK and US bookstores. In our globalised, connected world it seems illogical to continue to maintain these importation restrictions. (ADA, ALCC and ALIA, sub. 252, p. 7)

The reality is that as more and more Australian readers shop online rather than in bricks-and-mortar stores – due to the uncompetitive nature of the latter – fewer and fewer of these customers encounter Australian writing. (Kinokuniya Bookstores of Australia, sub. 6, p. 1)

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### *Independent booksellers*

Independent booksellers are known for the level of knowledge, service and interaction they can provide to their customers. However, several submissions expressed concerns about the viability of such independent booksellers if the PIRs were removed. For example, Walker Books said:

In the UK the demise of the independent bookstore has gone hand-in-hand with the highly discounted prices of bestsellers by supermarkets and in 2006 such outlets were reported to be closing at a rate of two every fortnight. Parallel importing could have a similar effect on independent booksellers here. (sub. 256, pp. 11–12)

Some participants believed that the level of service offered by independent booksellers might be compromised by any contractions in local publishing resulting from the removal of the PIRs:

... independent booksellers rely to a greater degree on ‘breaking’ new Australian authors than other sectors of the market. A reduction in local publishing represents a reduced opportunity for independents to continue to differentiate their businesses from larger chain stores and mass merchants by actually reading and recommending to their customers the vast range of Australian talent which flows from publishers taking a risk on publishing new authors. (Leading Edge Books, sub. 254, p. 5)

However, the Coalition for Cheaper Books argued that independent stores could benefit from the removal of the PIRs:

Independent booksellers particularly will have the opportunity to differentiate their stockholdings with more flexibility on international purchases therefore offering a wider range to customers. (sub. 218, p. 17)

On the issue of price, while individual independent booksellers may not have the ability to directly or efficiently source substantial overseas supplies themselves, they may choose to deal with wholesalers (either existing overseas wholesalers or any Australian-based ones that may emerge), or form (or join) buying groups with other bookstores with similar purchasing requirements.

In response to the discussion draft, several independent bookstores reiterated their concerns, and focussed on the role and value of independent booksellers in the community, arguing that they:

... are a distinctive and vital part of the Australian book industry and the local communities in which they exist. They offer readers expert advice and service, are leaders in range and product knowledge and are passionate about the books they read and sell ... [they play a significant role] in their local community through ... partnerships with libraries, schools, reading groups, kindergartens, day care centres etc. (Maclean’s Booksellers, sub. DR438, pp. 1–2)

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As noted in the discussion draft, the Commission considers that while independent booksellers potentially could lose some of their market share, their ability to attract continued patronage in an open market would depend, as it does now, on providing a differentiated offering that consumers value sufficiently.

### *Sale or return conditions*

An additional factor that has an impact on all booksellers, including independents, is the availability of a ‘sale or return’ option when purchasing books from local publishers. While this raises costs to publishers, and accordingly effects the RRP’s they set and the discount they offer to booksellers, participants observed that it helps minimise the risk to booksellers of stocking books, particularly those that have not already attained bestseller status. Some were concerned that any changes to the PIRs may reduce the likelihood that publishers would continue to offer ‘sale or return’ conditions:

... the question of sale or return rights on new releases might need to be reconsidered in ... [the absence of PIRs] depending on the level of pressure exerted by a drop in sales and the fact that the risk of publishing locally was no longer balanced by the retention of territorial copyright. As the ‘seeders’ of the market, the retailers who read, recommend and often take risks on new authors, the loss of sale or return rights would represent a major threat to independent bookseller business models.

With no incentive to hold local stock to preserve copyright, it was felt that backlist turnover might also be impacted, resulting in a similar loss of scale. Booksellers may find more and more titles would simply not be carried locally by the local distributor or carried in smaller quantities reflecting their higher level of risk. As a result they may be *forced* to order more stock from overseas at potentially disadvantageous exchange rates and on a firm sale basis (given the cost of returning stock). (Leading Edge Books, sub. 254, p. 4)

To the extent that booksellers gain advantages from, and are willing to pay for, ‘sale or return’ conditions, local publishers may be able to continue offering them in the absence of the PIRs. This would be one way that they could differentiate their services to compete against overseas suppliers who are more likely to provide stock on a ‘firm sale’ basis. In the long run, to obtain business in Australia, overseas suppliers might need to adapt to offer some form of ‘sale or return’ conditions, or offer discounts of sufficient magnitude that booksellers would be willing to purchase on a ‘firm sale’ basis.

### **Education Booksellers**

As noted in section 5.1, education books have specific characteristics that differentiate them from trade books. These differences also affect booksellers.

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Within the higher education sector of the market, lecturers prescribe their choice of textbook for each course on offer (box 5.8), and once this decision is made the bookstore must obtain copies of that text.

This means that education booksellers are less able to determine which books they require from publishers, and in the view of Graeme Connelly (who, while President of the Australian Campus Booksellers Association, made an independent submission):

... the power relationship between publishers and booksellers is far from equal. In basic economic terms publishers are “price makers” whereas booksellers are “price takers”. A relatively small number of tertiary publishers (circa 6) dominate the textbook supply industry in Australia but equally importantly campus booksellers are not able to choose

### **Box 5.8 Competition in the adoption of text books**

In responding to the discussion draft, some education publishers argued that the process of prescribing texts — with publishers competing with each other for the decisions of lecturers (or other decision making bodies) — is ‘fiercely’ competitive and, as such, does not result in higher prices:

The textbook ‘prescription’ process itself, which obviously takes place before the book is ordered by the bookshop, exerts significant downward pressure on price. Publishers compete vigorously to win large ‘adoptions’, a process which places the decision maker — the academic — in a position of bargaining power. The final selling price (i.e. to students) is central to these negotiations; the commoditisation of textbooks, along with pressure from students ensures that prices are kept in check. (Pearson Australia, sub. DR528, p. 2)

... for every single university course adoption and every single school booklist, there is substantial competition with a high number of competing texts by the publishers operating in tertiary and secondary ... The competition is fierce, fragmented and constant, and the margins are modest. (Cengage Learning Australia, sub. DR282, pp. 2–3)

While there may be competition between publishers, that the decision maker is the lecturer — not the student — means that price is just one of a range of factors that lecturers consider in prescribing texts, as noted by one publisher:

The lecturer’s textbook decision can be based on a number of things; the general approach of the text; the currency of the text; a closer matching of topics in the book against the course outline; the text being written by the expert in the area or someone the lecturer really admires; it having better teaching and learning resources — or it could be the price is cheaper. A lecturer will base their decision on a few of these things or all of these things .... (John Wiley & Sons Australia, sub. DR502, p. 9)

Given this ‘disconnect’, it is likely that those who prescribe texts would not be as sensitive to price as the purchasers. Indeed, as noted in chapter 2, Bryan Lukas — a department head at the University of Melbourne — commented that the majority of university educators do not give much weight to the price of the book to the student when deciding which texts to prescribe. As such, in the current environment of text prescribing in a closed market, the Commission considers that the price of educational books is not subject to full competitive pressures.

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amongst competing textbooks to supply to their customers since the actual version of say the microeconomics textbook is determined by the lecturer teaching the course. So not only are booksellers price-takers they are also content-takers. (sub. 60, p. 2)

If the PIRs were removed, education booksellers could become more able to facilitate lecturers' and students' access to a range of suitable alternative editions of the prescribed texts, including cheaper overseas editions in those instances where the Australian content was immaterial, providing that timing and reliability of supply met their needs.

Some participants (for example, Graeme Connelly, sub. 60) argued that one disadvantage of utilising overseas supply sources in an open market is the potentially diminished certainty in the quantity and timing of supply. As noted in section 5.1, the Commission acknowledges that disruptions in supply are important issues for students, and that the PIRs provide some certainty in this regard. It can also be a significant advantage for local publishers in an open market.

## **5.5 Impacts on consumers**

As the terms of reference make clear, consumers' interests are central to this study. As noted in chapter 2, consumer spending on books totals around \$2.5 billion annually — significantly larger than the net output of the local publishing industry. However, whereas the effects of the PIRs on book producers attracted comment in most of the submissions received, the impacts on consumers were the subject of relatively limited comment (box 5.9). (That said, a petition, which included comments from many consumers, was submitted by the Coalition for Cheaper Books.)

### **Price effects**

The benefits to book producers from the protected higher prices of books under the PIRs comes at a direct cost to booksellers, in the first instance, and through them to consumers. Thus, provided that competition amongst booksellers is sufficient to ensure that cost reductions are generally passed on to consumers (as the Commission considers to be likely given the competitive nature of the market — see box 5.10), then removal of the PIRs would provide benefits to them.

The responses of consumers to these price benefits would vary. Trade books are largely a discretionary consumption item, purchased for a variety of reasons including for entertainment or leisure, or as gifts. Hence, as well as representing savings on the costs of books that consumers would have purchased anyway, lower prices would most likely result in some increase in the level of book purchases and some increase in the discretionary income available to spend on other goods.

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### Box 5.9 Selected participants' views on the impact on consumers

As noted in chapter 1, not unexpectedly, the vast bulk of submissions to the study were made by members of the books industry. A number argued that any potential benefits to consumers from reforming the PIRs had been achieved by the 30 and 90 day rules, and that further reform would only hurt consumers. A common view was:

Opening the Australian market will not deliver lower prices to consumers, just fewer titles and fewer independent bookstores and franchises ... Consumers would be worse off under a change in the parallel importation rules as there would be a dramatically reduced range of books on offer. (Random House Australia, sub. 193, p. 18)

Some participants, while alluding that consumers might benefit from lower prices were the PIRs removed, argued that there were offsets to the price benefits:

Competition is about increasing choice for consumers. However, if there are fewer books available with Australian content, where is the choice? There may be demand for these books but if they aren't available, the Australian consumer misses out. The availability of cheap books does not outweigh the great disadvantage of less choice and potentially poorer quality books. (Marianne Musgrove, sub. 179, p. 2)

I know that many Australian families are not in a position to pay the \$30.00 (or even \$35.00) purchase price which an Australian hardback picture book currently commands. ... However, the fact that the local industry is currently able to produce such books at all means that these books are available for purchase by school and municipal libraries, and so can still be accessed by Australian children. (Nadia Wheatley, sub. 189, p. 3-4)

There was also a small number of submissions from participants who felt that removal of the PIRs would benefit consumers:

We strongly support removal of the restrictions upon parallel importation of books. We believe greater competition will lead to an increase in the variety of books available and more competitively priced books, increasing their accessibility for Australians. (ADA, ALCC and ALIA, sub. 252, p. 8)

I strongly urge you to stop the restrictions on the importation of books which are unfair and costly to the Australian consumer. And in many case, pointless. I have just placed an order overseas for \$776, and for personal use, not resale, because of the idiotic cost of books here and the delay in availability. So no one in Australia wins. Surely consumers and booksellers should also have rights. (Linda Moody, sub. 194, p. 1)

Abolition of the provisions would open the doors to higher levels of direct importing or rights buying by Australian publishers, and importing by booksellers, of so much of the richness and variety of US publishing. Australian consumers would enjoy lower prices, higher production values and far wider availability of important titles on retail shelves. (Peter Donoghue, sub. 8, p. 7).

As an equity issue it [parallel importing] might also lead to improved educational outcomes by decreasing the likelihood that "disadvantaged" students would miss out on the available resources due to their limited financial circumstances. (Graeme Connelly, sub. 60, p. 1)

As a life long reader and lover of books (and editor by profession), I firmly encourage you to relax the restrictions on books in Australia. This will allow more reasonably-priced books for all; which is the key factor in getting more people to buy and read books. (Lynn Elsey, sub. 32, p. 1).

The petition calling for the removal of the PIRs, submitted by the Coalition for Cheaper Books (sub DR509), contained many similar comments.

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### Box 5.10 Pass through of cost savings to consumers

Some participants expressed scepticism as to what portion of any savings would be passed on to consumers, raising concerns that any gains from reforms would be 'captured' by booksellers (by not reducing retail prices). For example, HarperCollins Publishers Australia submitted that 'there is little evidence that retailers are inclined to pass margin on to consumers. In fact, at the moment evidence is that where possible, some will increase prices' (sub. DR450, p. 4). Penguin Australia noted that 'At the moment two of our biggest chains are selling many titles significantly above RRP' (sub. DR481, p. 4). And Kim Rackham stated:

It would be nice to believe that the Coalition for Cheaper Books is truly looking out for consumer interests. But it is FACT that many retailers already charge several dollars [above] the recommended retail price for many books, taking a cut on the sale well above what the author receives. (sub. DR414, p. 1)

Importantly, the Commission's analysis does not rely on the assumption that booksellers are motivated by altruism towards customers, and would pass on cost savings were they able to retain them. Nor, in its analysis, would it be necessary for booksellers to pass on cost savings to consumers, in the form of lower prices, for the reform of PIRs to generate a net benefit for society. This is because net gains from trade reform typically arise simply from the reallocation of a country's productive resources to areas of comparative advantage, irrespective of whether any input cost reductions are passed on to consumers. Repeal of the PIRs would also prevent the significant leakage of assistance to overseas rights holders that presently occurs.

That said, the gains are larger when input cost reductions are passed on, and, in the Commission's assessment, there is little reason to believe that most of the reduction in wholesale prices enjoyed by booksellers would not be passed on to consumers. The book retail market has numerous competitors (see chapter 2) and low barriers to entry. Current profit margins are acknowledged to be low, suggesting an absence of monopoly pricing power.

It is widely recognised that some stores have recently increased ticketed prices for some titles above RRP, although vouchers and other discounting practices for other titles confound the picture somewhat. However, such increases in prices of themselves do not indicate monopoly behaviour by, or a lack of competition among, retailers. As the Commission noted in its discussion draft, different bookstores offer a range of products and services to consumers at a range of prices, and this is likely to continue given any changes to the restrictions. Where some stores are able to maintain prices in excess of that charged by other stores in the long run, this suggests that the product-service offering provided by the former stores is valued more highly by some consumers. Such differentiation is a common feature of competitive markets.

The Commission further notes the decision of the ACCC in 2008, in approving the acquisition of Borders by Angus & Robertson, which judged the retail book market to be highly competitive.

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In the case of educational books, the impacts on demand are more difficult to predict. In general, students — particularly tertiary students — will access vital course material one way or the other. That said, as the price of new textbooks falls, purchasing becomes more attractive relative to other ways of accessing the material (such as borrowing from a library, purchasing the book second-hand or photocopying). For those who would have purchased a new textbook anyway, a reduction in price would translate directly into an increase in spending power. And to the extent that new texts fall in price, it is likely that there would also be a reduction in the price of those texts in the second-hand market.

### **Changes in range and availability**

As several participants noted, the 30 day rule has increased Australian publisher's responsiveness to international publication dates, improving local availability. Allen & Unwin commented:

The majority of bestselling international books published by Allen & Unwin are published in Australia simultaneously with the overseas editions, in trade paperback formats ... All Australian publishers routinely follow this practice as a consequence of Australia's innovative 30 day rule. (sub. 214, p. 2)

Were the PIRs to be fully repealed, Australian booksellers could also offer competing editions of titles, giving consumers greater choice, particularly in regard to format. At present, consumers seeking a different format to the one chosen by the Australian publisher must either employ the single use provisions when ordering through a local bookseller or the services of an online bookseller.

As discussed earlier, removal of the PIRs might lead to a reduction in the range of Australian-authored titles to the disadvantage of some consumers. There might also be a reduction in the range of booksellers, again to the detriment of those consumers who particularly value such retail models. However, these outcomes would reflect shifts in publishing and bookselling behaviour that results from the collective preferences of consumers expressed through the market, in response to changes in the relative prices of the product and retail choices open to them. As such, consumers as a whole would be better off from such changes.

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## 6 Cultural and related impacts

### Key points

- Books are a significant source of cultural value to Australia.
  - Australian books can act as repositories of national history, help to build or maintain a unique national identity and enhance an individual's connection with Australian society.
  - While there is particular local value in Australian works, books by overseas authors also have cultural value.
  - The cultural value arising from the creation of a book is significantly amplified by the broad dissemination of the ideas it contains.
- Books can also provide benefits through improving literacy, diffusing knowledge and ideas, and enhancing interaction.
- The PIRs, by increasing returns to publishers and authors, provide incentives for the creation of additional Australian books, increasing cultural and related benefits to Australia.
- The benefits consumers gain by reading books will generally be reflected in demand for those books, that is, in the prices they are willing to pay.
  - It is the additional value to the broader community that is the appropriate focus of government support for the industry.
- The unpriced 'externality' component of the cultural benefits that is dependent on the PIRs is unlikely to be large, and PIRs do not target such benefits effectively or efficiently.

Books differ from many other 'everyday' consumption items in that, in addition to the enjoyment, knowledge and other benefits received directly by the reader, the reading of a book can create broader benefits for members of the community. In elaborating on the nature of these benefits, Kate Grenville stated:

If we were producing socks or toasters the decline of a local industry would be of no importance except to the individuals involved. But if Australian writers can't afford to go on writing (and Australian publishers can't afford to publish us) then there will be many fewer books reflecting our unique Australian experience ...

Schools will have a narrower base of books with which to explore Australian life. Overseas culture, language, history and values – especially from the US – will dominate our bookshelves as they now dominate our screens.

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It's obviously important for the vitality of our nation to be able to read about our own history, our people, our issues, in books written by Australians primarily for Australians. Without that conversation with ourselves we'd be an impoverished and stunted society. (sub. 2, p. 1)

Numerous study participants discussed the cultural and related benefits of books and literature (see box 6.1). Most thought that the total cultural value was significant, a view shared by the Commission.

This chapter discusses the nature and extent of these broader benefits to the community arising from books, and explores the extent to which the Parallel Import Restrictions (PIRs) are an effective and efficient means of capturing the policy-relevant component of them.

## **6.1 Cultural benefits**

### **The aggregate cultural value of books**

The concept of cultural value applies to a range of products — predominantly in the arts sector — including heritage buildings, paintings and theatre, among others. The existing literature identifies several elements that make up the cultural value of a good. For example, Olivier, Thoenig and Verdier (2008, p. 357) characterised it as thus:

In addition to its intrinsic economic value, consumption of a cultural good confers symbolic and non-pecuniary value. It reinforces a sense of belonging to a particular community of people and facilitates social exchange within that community.

In discussing the nature of cultural value, Throsby (2000, p. 11) identified the following aspects of value as potentially being embodied in, or flowing from, an item of cultural value:

- aesthetic value — beauty, harmony
- spiritual value — understanding, enlightenment, insight
- social value — connection with others, a sense of identity
- historical value — connection with the past
- symbolic value — objects or sites as repositories or conveyors of meaning
- authenticity value — integrity, uniqueness.

Throsby notes that Uluru, as an example, can be a source of all these aspects of cultural value.

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## Box 6.1 Selected participants' views on the cultural value of books

Several participants highlighted the cultural significance of books to Australia:

There is a benefit attached to the reading of all books but a country without books in which it can describe itself, without a literature, without its own histories and biographies, without its own novels and poetry and plays, will be imaginatively impoverished. (The Text Publishing Company, sub. 63, p. 27)

... books are at the apex of the media tree ... they are the most comprehensive, most thoroughly argued, most influential and the most permanent form of knowledge, culture and information in society ... Non-fiction books are the prime vehicles for ideas, knowledge, serious debate and the historical record. Books of fiction inform us in a very different, but no less profound way. They investigate culture, values, morals, the way we live our lives, the way we think and feel and relate to each other. (Black Inc, sub. 113, p. 1)

Australian books help to keep Australia's cultural identity alive and well. Books are not just a commodity like canned beans or shoes. (Public Libraries, New South Wales – Country Association, sub. 100, p. 1)

Books are more than just objects to be consumed. They help shape a person's sense of self. They help a community define, explore and develop its cultural identity. (Marianne Musgrove, sub. 179, p. 1)

It is vitally important for Australians' sense of self for us to read our own stories as told by Australians. Competing as we do in an English language market with the two biggest story-telling machines on Earth, Australian publishing is especially important culturally because it allows us, as a people, to talk to ourselves clearly and unaffectedly. (Australian Publishers Association, sub. 244, p. 46)

People want to understand themselves better and their families, communities, society and country. To do this they need to read their own stories told by their own compatriots. Books of all types are needed but a country's culture cannot be fully formed by others. (Allen & Unwin, sub. 214, p. 6)

In all countries [books] are recognised both as commodities in [a] commercial sense and are seen as *social property* — it is this character as social property which marks them off say from refrigerators and tvs and cars ... They are given this special standing as social property — as property held in common and secured by copyright — because they are considered to be the building blocks, to a significant degree, of the other arts of our civilised life. (Frank Moorhouse, sub. 103, pp. 8–9)

Children need to read books they identify with, books written in Australian voices, with Australian humour and set in Australian landscapes. A nation's literature has traditionally been seen as a reflection of the values, tension, myths and psychology of that culture. These books cannot be replaced by books written for another culture. (Bren MacDibble, sub. 46, p. 1)

... [Some would argue] that Australian children can be served, culturally, just as well with film, television, etc, as opposed to books. I would argue (and I also speak here as an ex-Early Childhood teacher) that books provide the strongest link to the development of the imagination, more than any other media. A book is tangible; it can be a friend on the darkest night, a mentor or a magic carpet ride into lands unknown. (Sheryl Gwyther, sub. 51, p. 2)

Australian fiction and non-fiction informs us about ourselves and illuminates, reviews and critiques our society and culture. I believe it should exist ... for the benefit of Australians and those interested in Australia. (Ann Cunningham, sub. 233, p. 1)

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Many of these aspects of value arise from the purchase and reading (the consumption) of books. Books can contain historical value in the way they record and convey important events. They can convey society's 'unwritten' rules — or challenge them — and provide readers with a sense of connection with their society. And in some instances they may attain a status as a symbol for what it means to be a member of a particular culture or nation. While the main benefit people gain from any individual book is likely to come from the utility of the content or enjoyment and stimulation gained while reading it, it is clear that the cumulative cultural value of books can be material. Thomas Keneally (sub. 16, p. 8) said, with reference to local literature:

... there is no doubt that cultural benefits are palpable and that communities express their value and welcome them ... No literate society has ever doubted the immeasurable benefit of a native literature whether the works cherished dealt with or transcended identifiable national issues.

Books are not the only platform for conveying cultural value in the form of storytelling and the transmission of information and ideas, as these can also be conveyed through film, television, music, art and live performance, among other things. Indeed, in the modern world, competition in the 'marketplace for ideas' can ensure that new concepts are available freely and quickly to a wide audience. For example, many academics now diffuse their research and thinking through the internet. At the same time, these other media can amplify the diffusion of ideas contained in books.

### **Factors affecting the cultural value of different books**

While the aggregate cultural value of literature may be substantial, the cultural value of each book will vary, depending on matters such as category and genre, specific content and idiom.

In relation to category and genre, several participants argued that children's books are of particular cultural importance. The Children's Book Council of Australia said:

We see these books as a major enculturating force — they help Australian children to discover and celebrate who we are and what is important to us; they tell us our own unique stories in our own language/s, asking us to critically examine ourselves and our way of life. (sub. 71, p. 1)

Bren MacDibble focussed on the role of children's literature in facilitating learning and creating a sense of national identity:

Children enjoy reading books where they can [empathise] with the main character. Children who enjoy reading become children who find learning easier. In order to teach children well, they need to have access to books they enjoy reading. For young readers, national literatures play a crucial role in developing a sense of identity, a sense of belonging, of knowing who they are. (sub. 46, p. 1)

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(At the same time, the *Harry Potter* books are considered by some to have been the most important in promoting children’s reading, both in Australia and overseas.)

Some educational books may also hold cultural value for the nation. Texts on national history and politics are examples. However, educational books on more universal subjects, such as mathematics and physics, are unlikely to have significant specific cultural value for Australia.

In relation to trade books, those with specifically Australian content — namely books that tell ‘Australian stories’ including Australian history, biographies of notable Australians, or novels featuring Australian settings or characters and Indigenous writings — clearly can contribute to cultural value by providing a means of better understanding Australian society.

Some books without particular Australian content may also be of some cultural value if they are authored by an Australian, in that they may convey their story in an Australian ‘voice’, or from an Australian ‘angle’, and/or through underlying Australian themes within more general stories. Pamela Freeman contended that the works of several Australian fantasy writers are relevant examples:

The issues dealt with ... have resonances which are uniquely Australian. For example, ... [several writers] have engaged with the issue of dispossession of indigenous people, a form of racism rarely examined by writers from other English-speaking countries. [Karen] Miller’s current series investigates religious war and the need for a secular state in which different cultures can coexist – certainly relevant to Australian readers. Fantasy often allows writers to explore themes in depth or in extremes in a way which realistic fiction cannot. The way writers do this is influenced by their own culture and experience, and I believe that Australian fantasy and science fiction writers present a type of discourse within the genre which is unique. (sub. 3, p. 4)

Just the use of Australian terms in the language of the book may be of some cultural value. This is a matter that many participants from the book industry felt is of considerable importance (see box 6.2).

However, Australian authorship alone does not necessarily give rise to substantive cultural value. For example, even where they contain Australian-specific content, there may be little or no additional cultural benefit arising from an Australian-authored ‘do it yourself’ book, financial guide or computer manual, as opposed to a foreign-authored one.

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## Box 6.2 National identity in the preservation of language

Many participants were concerned about the harm to Australian culture through any replacement of uniquely Australian aspects of language with foreign terms:

The US edition of my book is not the same as the Australian edition ... In my US edition, babies wear diapers, not nappies. People do not eat Tim Tams or Yum Cha. They push a cart around the supermarket, not a trolley ... They eat a pot pie at the football, rather than a meat pie. My characters do not wear thongs, in case readers think they are walking down the street clad only in a G-string. (Toni Jordan, sub. 26, p. 2)

It is common for changes ... to be made before a book is published in an export market ... Many Australian references are lost and idiomatic language is altered. ... If something stands out as inauthentic, it pushes you out of the story, and spoils the reading experience. Some changes also have real potential for confusion ... (Nick Earls, sub. 17, p. 10)

To open up a book bought in a local bookshop and read in US spelling with US references ('dial 911') is to create a creeping erosion of Australian culture that's difficult to measure and impossible to reverse. Within Lonely Planet, this is a very real and tangible issue. The word 'traveller', for example, is spelt with one 'L' in American English. (Lonely Planet, sub. 69, p. 2)

The Commission notes, however, that where Australian idiom or terminology are central to the work, not all authors have changes made to their books, and in some other cases, the adjustments in overseas editions can take the form of a glossary explaining them, rather than changes in the text to eliminate them — Mem Fox's *Possum Magic* being an example of this approach.

Participants' concerns were not limited to terminology alone, but also extend to the content and even the narrative of a work:

Australian writers will be forced to write for a more "global" market. ... when I write for the American educational market: not only do we get American terms (sidewalk, Mom, ketchup, jelly, gasoline), but any religious figures are banned (no priests, nuns, rabbis, imams), and even coffee and birthday cake are outlawed (junk food!). (Pamela Rushby, sub. 31, p. 1)

High profile authors such as Nick Earls and Emily Rodda have already gone public with their experiences of American publishers wanting to change everything from setting (the Brisbane suburb of Indooroopilly being deemed unacceptable for an American audience) to vernacular (Aussie kids asking "Mom" for "cookies") to omitting scenes (because they don't "get" our humour). (Christine Bongers, sub. 95, p. 2)

My 2004 novel *Giants of the Frost* was revised significantly for the American market. Along with the letter "u" dropping out of colour; along with the "taps" become "faucets"; the US editors required a "happy" ending to a story that was set up from the beginning as a tragedy ... should this book, for example, outstrip sales of my Australian editions here, something essentially Australian has been lost. (Kim Wilkins, sub. 12, p. 1)

Such changes to content can also occur in educational books. Cengage Learning Australia provided examples of content changes required for the US market including:

- in an illustrated reader on the source of milk, with a line drawing of 'Daisy the cow', the depiction of the udder would be removed
- in a non-fiction reader on jobs involved in building dams (such as Hoover Dam), it was recommended that the word 'Dam' be removed from the book's title (sub. 52, p. 9).

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Moreover, books by foreign authors can culturally enrich Australians in their own ways. Each culture has its own history, identity, symbolism and unique insights into human affairs, spiritual matters and so on. Through exposure to these foreign perspectives, readers may discover new ways of resolving problems, come to appreciate a wider set of viewpoints, develop greater tolerance or understanding of people from other cultures, and gain new insights into their own way of thinking and their own culture. Accordingly, it may be that a balance of works from different cultures — grounded by exposure to Australian culture — provides the greatest benefit for Australians.

Thomas Keneally accepted that books by authors of all nationalities can supply cultural benefits to varying degrees, while emphasising the particular importance of local literature:

... cultural benefits arise from foreign works in so far as we are members of an international community, but the cultural benefit attaching to Australian works, given our book-buying choices, is obviously a matter of great value to Australian readers. (sub. 16, p. 9)

As noted in chapter 2, the Commission estimates that around one-third of trade books sold in Australia in 2007-08 were Australian authored.

In addition to the genre of the work and nationality of the author, the specific content of each book obviously affects its overall cultural value. While some books may hold particular cultural value, equally there are others whose value will lie almost solely in the entertainment of the reader, rather than any cultural aspects. In this context, one Australian author was critical of ‘commercial novels’:

The commercial novel has now grown to become the giant best-seller, the “page-turner” of today. Their writers seem to show more talent for research than for creative writing, and indeed they appear to have more in common with journalists ... These novels usually have little or no literary merit whatever and do little if anything to truly hold a mirror up to nature or reveal a country’s culture ... (Robert Morrison, sub. 1, p. 1)

## **Cultural value from creation and dissemination**

A component of the cultural value in a good can arise simply from its existence. In the context of books, this ‘existence value’ is often stated in terms of the choice of a range of titles, particularly Australian titles, and the associated presence of a literary ‘community of creators’ who provide such works:

Australia is undergoing a tremendous burst of growth and development in the literary arts. It has a strong publishing sector, and all that goes with that – the nurturing of Australian writers, our literary culture, the small presses, the specialist booksellers, the diversity of voices ... (Graham Storrs, sub. 22, p. 1)

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As in most creative industries, a diversity of voices within literature is clearly beneficial. As such, there is likely to be some threshold level or ‘critical mass’ of creators that is of benefit to a community, below which any reduction in the number of creators could clearly lead to net costs to society. Some participants, such as the Australian Booksellers Association (sub. DR478), argued that the presence of, and additions to, a community of creators of itself leads to benefits, and pointed to the work of theorists such as Richard Florida, which observed a correlation between a city’s prosperity and its ability to attract the ‘creative class’ (see, for example, Florida 2002). However, the theory that the presence of the creative class leads to prosperity has been criticised on several grounds.<sup>1</sup>

Whatever the size of any particular community of creators, the Commission considers that its main cultural value depends on the extent to which it is responsible for the creation of a range of literary works, and the cultural value that the broader community obtains from those works. In this regard, the main cultural value of a work is likely to arise from its dissemination and use:

We strongly believe that a thriving Australian book industry is of little use if those books are not readily accessible to the Australian public. We gain value from books by being able to access, read, discuss, and draw from those books. The creation of books is just one side of the coin; the other side is having adequate access to those books. (Australian Digital Alliance, Australian Libraries Copyright Committee & Australian Library and Information Association, sub. 252, p. 3)

There can also be some exposure of the ideas in a book associated with the marketing of a book, particularly when it is initially released, regardless of whether it goes on to sell in great volumes.

## **The relationship between cultural value and market value**

Beyond the intrinsic motivations of authors and publishers, the extent to which the creation and subsequent dissemination of books occurs depends in large measure on the price of books in the market place. A mismatch between a product’s total value to the community, and its market value, can in some circumstances lead to insufficient (or excessive) production and consumption. This section explores the relationship between the cultural value and market value of books.

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<sup>1</sup> The primary criticisms of the theory relate to a lack of supporting research, a lack of clarity in defining the creative class and the issue of causality — that is, wealthy cities may attract creative people, or creative people may make cities wealthy. Further, policies aimed solely at the creative class may neglect the needs of other groups of other parts of the community (VCEC 2008). The Commission further notes that PIRs would, at best, be a very indirect mechanism for attracting the creative class to cities.

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Although they are separate concepts, cultural and market value are related and in the case of many cultural goods they ‘overlap’. Throsby (2000) notes that cultural value can increase the price that individuals are willing to pay for a product beyond the value of its other, more prosaic features and uses — for example, a building is likely to command a greater price if it has heritage value that is appreciated by prospective purchasers (although, equally, they are unlikely to be willing to pay an amount that reflects a heritage building’s full value to the broader community).

For most books, it is likely that there is a close relationship between market and cultural value. As noted in chapter 2, individuals purchase books for a variety of reasons, including pleasure and enjoyment, but also the pursuit of knowledge and understanding. Consumers often choose books (whether for themselves or for others, such as their family or their students) because the books potentially embody cultural value or may be culturally enriching to read. This value would generally be reflected in the price that purchasers are willing to pay for different books.

While purchasing decisions driven by cultural value are clearly the case for books whose content is directly of a cultural nature (works on art, history and the like), the demand for Australian works in the domestic market today suggests that Australian consumers are also willing to pay to purchase other works of particular cultural value to them. This demand exists even though Australian works may be more costly than similar foreign works, as Working Title Press stated:

... Australian publishing companies must be sustainable and the cost of producing Australian literature for a recognizably small market is not cheap. Print runs are relatively small and unit costs comparatively high. In most cases it is not possible for local books to compete dollar for dollar against the imported products of much larger markets. In short, if Australians want to buy books that reflect their history, culture, geography, idiom and values, they must pay for them. (sub. 143, p. 2)

In submissions to this study, Australian authors also stated their belief that their readers place particular value on the Australian aspects of their work. For example, Tim Winton felt that his use of Australian elements in his work is an attraction for his readers as he writes ‘about peculiarities of place, region, landscape. Vernacular language is integral to my work and is valued by my readers’ (sub. 204, p. 4). And Kate Grenville commented that, early in her career:

... my first six books of fiction made modest sales, always supplemented by other work and grants. I continued writing because of the satisfaction of being part of the conversation we Australians were having with each other about issues of importance to us. My readership was almost exclusively Australian. I received large volumes of mail from readers, all with the same refrain: that I was talking about our own issues, in our own language, and this was why they valued the books so highly. (sub. 68, p. 3)

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## The cultural externalities of books

While much of the cultural value from the consumption of books will be reflected in their market value, there is also likely to be a component that is not. Where one person's purchase and consumption of a good or service generates benefits for others (aside from the producers and sellers of the good or service who of course receive payment for their work), unpriced benefits, or 'externalities' in economic parlance, can be said to arise. It is these external benefits (and, in some cases, costs) of activities that provide the strongest rationale for governments to support (or, in the case of external costs, discourage) many activities.

Some externalities involve direct and obvious impacts. Pollution from a factory affecting nearby residents is one example of an external cost. Conversely, equipping a car with anti-skid devices can improve the safety of not only the occupants but also of other road users and pedestrians, and as such provides an external benefit. Where externalities are significant and can be addressed effectively by some form of government measure, intervention in the market will potentially be warranted.

The cultural externalities that arise from the consumption of books are likely to operate in much more subtle, intangible and diffuse ways. A key way such benefits can arise is through impacts on stocks of social capital. Though difficult to measure, elements of social capital have a range of beneficial effects on individuals, society and the economy (PC 2003b). While the impact of any particular book on the stock of social capital will typically be very limited, collectively the creation and dissemination of culturally valuable literature will have a more discernable impact.

Specifically, the consumption of culturally valuable books, and the ideas they contain, can help diffuse social norms. Where more people come to understand the unwritten rules of a society, their actions become more predictable or 'trustable' to others, facilitating social and economic exchanges. Further, as more people read works that reveal and effectively promote aspects of group identity, other members of the group may benefit insofar as the effective membership of the group is widened. More generally, the reading of books of cultural value may help individuals to feel more connected to, and to be more productive within, particular social groups or the wider society, to the benefit of all:

... the consumption of cultural goods is not only beneficial for the individual consumer but contributes to form a "better" or a "more civilised" society which is enjoyed by all its members irrespective of (and in addition to) their own cultural good consumption. (Pethig and Cheng 2000, p. 21)

As with overall cultural value, the significance of any externalities will vary from book to book. For example, as a number of participants emphasised (for example, the Australian Publishers Association, sub. DR513), the ideas embodied in some

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books have had far reaching impacts. Most obviously, the core ideas that were embodied in books such as *The New Testament*, *The Wealth of Nations*, *Mein Kampf* and *The Female Eunuch* have had major impacts on how societies operate. Truly ‘iconic’ works are rare, but some books have similar, though smaller, external effects through their influence on people’s views and attitudes. However, for the vast majority of the hundreds of thousands of titles purchased and read in Australia each year, the Commission considers that most of the cultural value they generate will be ‘internalised’ by the individuals who consume those books.

Even where books do contain ideas that have a wider influence on society, determining whether this influence translates into *benefits* for society can be contentious. Thus, some books that are seen as reinforcing existing norms and attitudes, when released, might be looked upon, at a later date, as having retarded beneficial personal or social change. Likewise, some books that criticise existing views, norms and attitudes might not be seen by all as advancing thinking on the topic but rather as unravelling the social fabric or undermining community action. For example, some people would see Professor Ian Plimer’s recent book *Heaven and Earth* — which purports to debunk the scientific consensus on climate change — as generating external costs, to the extent that it weakens community support for measures to reduce greenhouse emissions. Most clearly, books that have the effect of promoting intolerance between groups can diminish certain forms of social capital and generate external costs.

While the creation of some negative as well as some positive external effects may be part and parcel of the operation of the marketplace for ideas, it should also be recognised that books and literature are but one way by which ideas and social norms are diffused and group identity is communicated — other media (such as film, television, radio and the internet) have a particular ability to reach large groups in society. Indeed, as noted above, many academics and others now diffuse their research and thinking quickly and freely through the internet.

Beyond such impacts, another way that Australian books could generate external benefits is if they make Australia a more ‘marketable’ identity to the eyes of foreigners. According to the Australian Society of Authors:

Seen as cultural producers, Australia’s authors and publishers are as important to the national interest as our primary producers. When we export our culture, we open the doors for our businesses and their products ... [without PIRs] Our nation would lose a strategic resource and our ability as a nation to represent ourselves as culturally unique to the rest of the world would be diminished. (sub. 70, pp. 9–10)

Similar arguments are sometimes raised in relation to the hosting of high profile sporting or political events, or films such as the recent release, *Australia*. In relation to books, these arguments rely principally on the idea that the consumption of

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Australian-authored books by foreigners, or the recognition by foreigners that some Australians are successful authors, leads to an unpriced benefit to Australians, for example through more travel to Australia or higher demand for Australian goods. However, in the Commission's view, such impacts are not likely to be significant in most cases.

## 6.2 Educational benefits

Aside from the obvious educational value of books in the 'educational books' category, reading in itself can improve literacy and expand vocabulary. Depending on the subject matter, it can also enhance a person's awareness and understanding on specific topics as well as their cognitive capabilities more generally.

The educative benefits of particular books will accrue mainly to the individual who buys and uses those books. For example, reading an engineering textbook will help the reader's career in that field. This constitutes a direct benefit to the individual, and one they can obtain a return on themselves by using the knowledge and techniques gained from the book in advancing their career. That said, there is also a broader benefit of improved human capital, in the form of a more innovative workforce, greater labour productivity, higher taxable incomes and potentially lower welfare dependency (although the broader benefits of formal education are generally the province of dedicated government policies).

The dissemination and consumption of books generally may also yield some external benefits insofar as it promotes higher levels of overall literacy. Observed behaviour patterns of more literate societies include 'reduced criminal activity, more informed public debate, better informed judgements with respect to health, and more sophisticated voting behaviour' (Chapman and Withers 2001, p. 6).

As noted above, several participants argued that children's books have a particular role to play in supporting not only cultural but also literacy objectives. For example, the South Australian Government stated that:

... research demonstrates that building literacy skills begins in early childhood and is increased by building onto the home literacies and cultural literacy practices of the family. The closer the match of the literacy product to the child's life experiences the greater the learning. This is why Australian publishers and educators are being encouraged to publish even more Australian books for children aged from birth to 5, 5 to 8 and 8 to 12 years ... (sub. 201, pp. 7–8.)

However, Black Dog Books (pers. comm., 28 May 2009) contended that parents and schools do not sufficiently value the benefits of children's books, and particularly Australian children's books, compared to the long term benefits they deliver:

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Many parents who do buy books for their children don't, or no longer, read. There's a general expectation that items for children will be less expensive than for adults ... and this carries over into the under-valuing of children's books by adult purchasers. The adult purchaser puts too much emphasis on the cost of the item, not apportioning the cost over the number of times the book will be read or shared. ...

With the decline of the teacher-librarian, the book purchaser within the school will often lack an understanding of the value of particular books to the ultimate consumer, the child reader.

Magabala Books noted the particular importance of culturally relevant material in improving literacy outcomes in Indigenous communities:

From 2005–2007, in partnership with the Broome and state libraries in WA, Magabala Books produced a series of Babies Board Books. This project aimed to break the inter-generational cycle of illiteracy by focusing on parents together with their children and improving the life chances of Indigenous children through increased literacy providing opportunities for participation in mainstream economy and higher income levels. Research showed that most of the board books on the Australian market originate from overseas and the few Australian board books available do not reflect the diverse cultures of our communities. It is therefore difficult to encourage Indigenous parents to read and inspire their families to do so when the available resources are so far removed from their own life experiences. This project addressed this gap. (sub. 188, p. 2)

As with cultural benefits, it should be noted that while books are an important source of such educational benefits, they can also arise, for example, from (educational) television programming and, increasingly, from the internet.

### **6.3 Effects of parallel import restrictions on external benefits**

Associated with the market impacts discussed in the previous chapter, the PIRs may influence the extent to which Australia obtains the external benefits available from books. In this context, the effects of PIRs may, in some cases, overlap with existing government programs designed to promote culturally valuable literature and reading, such as Australia Council grants (appendix F). The PIRs also affect books that such programs do not — and are not intended to — support.

#### *Size of the impact*

As noted in chapter 5, the price-raising effects of PIRs encourage a greater level of activity by Australian publishers and authors. Many participants argued that this allowed the publication of more literary works in Australia — including those

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which might otherwise be marginal commercial propositions — and as such the repeal of the PIRs would threaten these works and the cultural value they embody.

To the extent that such works generate external benefits for the community, these externalities would likewise be diminished in the absence of PIRs. Indeed, in commenting on the Commission’s draft recommendation to liberalise the PIRs, Leading Edge Books contended that:

... the likely resulting contraction in the Australian book industry would ... [have] a significant and detrimental impact on the cultural externalities associated with Australian publishing and currently enjoyed by Australian consumers. (Leading Edge Books, sub. DR388, p. 5)

However, the view that PIRs generate significant cultural externalities has been challenged. The Coalition for Cheaper Books and Professor Henry Ergas questioned to what extent the additional returns publishers receive by dint of the PIRs are used to support Australian authors (box 6.3). The latter also argued that removal of the PIRs would not necessarily have any negative impacts on cultural externalities, pointing among other things to the experience of New Zealand (see appendix C). Similarly, in the context of the Dutch fixed book price (FBP) agreement (which has some similar effects to PIRs), arguments for the policy on the basis that cross-subsidisation is used to support cultural benefits have been criticised:

First, the market even without a FBP will cross-subsidise debutantes and other risky projects in the hope of possibly getting a best seller. Second, even if this cultural policy ‘works’, there is no accounting for what is done with the cross subsidies ... there is no guarantee that profits on bestsellers will be used to cross-subsidise less popular, more esoteric books. In fact, publishers and booksellers have an incentive not to do this. Fourth, if less popular, more esoteric books are less price elastic ... than popular books, monopoly profits on less popular books will be higher and the cross-subsidy argument does not work. (van der Ploeg 2004, p. 16)

Further, it is not clear that additional financial returns for books consequent upon PIRs would be necessary to induce the creation and dissemination of a major share of the ‘big ideas’ and other culturally significant work that may give rise to external benefits, given:

- the intrinsic motivations many people have to express and promulgate their ideas, beliefs, experiences and stories
- the market rewards potentially available for doing so
- the increasing use of alternative platforms for promulgating such material.

Additionally, the cultural benefits from the creation of additional literary works that PIRs sustain are likely to be offset, to some extent, by the higher prices to which they give rise. These could result in somewhat lower overall sales than would

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### **Box 6.3 The impact of the PIRs on the creation of Australian works**

Several participants commented on the role that the PIRs played in encouraging the creation of Australian works, and submitted that their removal may have negative impacts on the incentives for further creation:

Without [territorial copyright] ... many Australian educational publishers, Era included, would find the costs of developing large series of works too risky. The creative effort is a costly, sophisticated process and cannot be denied or ignored. Territorial Copyright is not an 'incentive for investment and creative endeavour', it is a fundamental precept used to calculate the balance of risk to reward in the publishing process. (Era Publications, sub. 54, p. 3)

The potential removal of the current parallel importation restrictions poses a serious threat to Magabala Books as a publishing house as well as to the many Indigenous creators that benefit from the work of Magabala in promoting Indigenous literature, not to mention the wider Indigenous community whose culture is better understood and celebrated. (Magabala Books Aboriginal Corporation, sub. 188, p. 2)

We have a literary cultural heritage that is beyond 'market value' and well worth protecting. ... The cultural and economic longterm effects of changing the present restrictions on parallel importation are largely unknown and could be disastrous. We believe that the publication of quality Australian children's fiction is far too important to jeopardise. (Children's Book Council of Australia, sub. 71, pp. 1–2)

Other participants questioned the connection between the PIRs and the incentive to create new Australian works:

... there is no evidence provided by publishers of a systematic and accountable program of support and promotion directly stemming from the benefits of Australia's closed market. ... The Coalition contends that this is because such transfers do not occur, other than to an insignificant extent, as the multinational publishers who dominate the book market retain the bulk of PIR benefits as profit. (Coalition for Cheaper Books, sub. DR509, p. 13)

... there is no reason to believe that the cross subsidy potentially derived for all beneficiaries of PIRs because of higher prices and thereby higher profits facilitated is devoted to Australian authors or is the most effective means of developing and promoting local publishing. (Henry Ergas, sub. DR543, p. 2)

otherwise be the case, thus reducing the dissemination of the ideas contained in the books. While consumers are likely to take price into account when choosing between different booksellers and different titles, as noted in chapter 2, there is mixed evidence on the extent to which overall demand for books responds to changes in price.

Some participants, including the Coalition for Cheaper Books (sub. 218, p. 5), went further and argued that the price-raising effects of PIRs also discourage reading and the building of literacy skills. However, the Commission does not consider it likely that the PIRs would have much impact in this respect.

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In relation specifically to Australian children's books, and building on its view (set out above) that parents and schools undervalue the benefits of such books and give too much weight to cheapness, Black Dog Books argued:

The effect of putting a downward pressure on the price of books [by removing PIRs] is to prefer the cheap mass-produced product, which will have limited resonance, over the quality local book that will resonate for a lifetime. Often the decision will be made on price which advantages the short-term price advantages of imported titles (with long printruns) over quality and Australian writers and illustrators. (pers. comm., 28 May 2009)

In the Commission's view, were it to be judged that parents and schools give insufficient weight in their spending decisions to the benefits their children would gain from books in general, and from Australian children's books in particular, measures such as PIRs that increase the price of children's books to schools and parents would not be an efficient and effective policy response. Rather, were marketing by children's publishers to prove insufficient, the appropriate response would more likely entail measures to raise awareness of the particular value of such books, or direct government support for the provision of such books.

### *Targeting of external benefits*

As a means of targeting cultural external benefits, the PIRs have some mixed features because, as discussed in chapter 4, they provide greater rewards to copyright holders in line with the market success of a book. Some participants were inherently concerned about linking support to sales. Thus, Kate Grenville commented on the difference between 'mass-market' and 'literary' fiction, noting in regard to the latter that:

... these are often the books that reflect what's unique about our culture and that invite us to think about ourselves in new and productive ways. The cultural value of lower-selling books is impossible to quantify. But an Australia without the whole choir of local voices – big and small, highbrow and lowbrow, conventional and innovative – would be an infinitely impoverished nation. (sub. 68, p. 6)

However, as discussed above, in the Commission's view, linking the amount of support to sales will generally be desirable. This is because most of the cultural externalities attaching to books come from dissemination and readership, not from existence *per se*.

That said, it is true that PIRs do not differentiate according to the cultural value of particular books. Thus, for example, a bestseller of limited cultural value will receive equivalent assistance to a bestseller of high cultural value.

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As an instrument for targeting the cultural externalities associated with Australian-authored books, the PIRs have some other limitations. First, a sizeable proportion of Australian-authored titles do not have overseas editions and thus do not receive any significant direct protection from the PIRs. Second, as discussed in chapter 7, the PIRs result in income leakage to copyright holders of foreign-authored books. Given the small share of total sales in the English-speaking world accounted for by the Australian market, these extra returns to foreign copyright holders are unlikely to result in the creation of any additional works by them, whether of cultural value to Australians or not. But the assistance that leaks abroad has an opportunity cost in that it could, if directed to Australian-authored works, have increased the output of those works and the cultural benefits associated with them. Third, some of the assistance provided by the PIRs to copyright holders (of whatever nationality) is likely to be dissipated in the form of higher production costs.

## **6.4 Summing up**

Although the total cultural and educational value of books is significant, the bulk of the benefits of buying and reading most books is likely to be internalised by consumers and reflected in the market price of their purchases. It is the beneficial externality component of books' value that provides the key rationale for government support for the industry, although there are mixed views on the extent to which the PIRs generate such externalities. It is also a separate question as to whether the price raising effect of the PIRs on individual purchases is at least matched by the size of any external benefits to the broader community.

In the Commission's judgement, by assisting Australian publishing, the PIRs undoubtedly support some cultural and educational externalities associated with books. However, PIRs have intrinsic limitations for targeting such externalities, and the actual external benefits dependent on the PIRs, while policy-relevant, are unlikely to be large.

These limitations need to be considered alongside the benefits and costs of other instruments that might provide support for Australian writing when assessing the merit of the restrictions. These matters are taken up further in chapter 7.



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## 7 Net impacts and policy implications

### Key points

- The PIRs provide benefits to publishers, authors and also printers, but impose costs on consumers and the broader economy. These effects stem principally from the protected higher prices of many books.
- While most of the direct benefits and costs are offsetting, there are ramifications for community wellbeing.
  - PIRs make a contribution to the ‘unpriced’ cultural and related benefits for the community from some local writing and publishing activity.
  - However, the restrictions have efficiency costs and cause a transfer of income from Australian consumers to overseas authors and publishers.
- The current PIR regime is unnecessarily costly for consumers, restricts the commercial operations of booksellers and is not a well targeted mechanism for supporting cultural externalities. Reform is necessary.
- In the discussion draft, the Commission proposed that territorial protection be time-limited to 12 months duration.
  - Many participants considered that the proposal would create distortions between different genres of books. Some thought that it would be of insufficient impact to generate significant price and efficiency benefits, whereas others thought it would have much the same effect as full abolition of PIRs.
- Having considered industry feedback and undertaken further analysis, the Commission is recommending that the PIR provisions be repealed. As part of this change:
  - Industry should be given three years notice to facilitate adjustment.
  - Current subsidies for encouraging Australian writing and publishing should be reviewed immediately, and any changes implemented prior to the repeal of the PIRs. The new arrangements should be reviewed after five years.
  - To assist in monitoring the impact of these changes, the ABS should undertake a revised version of its 2003-04 industry and market surveys as soon as possible and update them prior to the five year review.
- Other reform options, including amendments to the 7/90 day rule and price caps, also offer benefits relative to the status quo, but there would be larger net benefits from more robust reform.

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The terms of reference ask the Commission to examine options for reform to the Parallel Import Restrictions (PIRs) and to consider any transitional arrangements that should accompany reform, should it be warranted. This chapter first summarises the benefits and costs of the PIRs, highlighting the key effects relevant for policy, and then explores potential reform options, before setting out the preferred approach.

## 7.1 The PIR balance sheet

Restrictions on competition will typically have impacts on the quality, availability and prices of the goods or services concerned.

However, in the case of the restrictions on the parallel importation of books, there do not appear to be major quality or availability issues. The latter was a problem prior to the introduction of the 30 day release and 7/90 day resupply rules in 1991. But with those changes and the emergence of global internet purchasing and distribution systems, timely availability of books is now much less of a concern.

Most of the key impacts of the PIRs therefore stem from their effects on book prices.

### *Price effects*

Drawing on a range of quantitative and qualitative evidence, the Commission has concluded that, while price differentials between Australia and overseas sources of supply vary over time and across market segments, at times the effects on prices are likely to be substantial. As detailed in chapter 4, without the PIRs there would be opportunities for Australian booksellers to obtain editions of current list trade titles from the UK and US markets that are cheaper than in Australia, in some cases substantially so. Although the scope is less clear, downward price pressure could also arise from other sources:

- some books — particularly educational texts — could potentially be imported from Asia at substantially lower prices, and Asia might also come to serve as a source of some trade books in the future.
- low cost ‘remainders’ could be imported from the UK, US and other markets.

### *Offsetting impacts*

Stemming from their price-raising effects, the PIRs assist activity and employment in the local books industry in several ways. As detailed in chapter 5:

- By protecting higher monetary returns from rights trading and local publishing activity, the PIRs enable publishers to increase their publishing portfolio and obtain some economies of scope and scale.

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- In lessening import competition, PIRs provide greater certainty for local publishers and authors in investing resources in the production and creation of particular titles.
  - The 30 day rule encourages the timely publication of foreign authored books in Australia, and there is greater demand for local book printing in Australia.

However, the higher prices for books that underpin these benefits are ultimately paid for principally by consumers and there are attendant effects on activity and employment elsewhere in the economy. Without the PIRs and the upward pressure on book prices they have sustained, enhanced consumer spending power could have translated into additional demand for other goods and services, generating employment and business opportunities in other sectors. Further, the expansion of the books production industries over recent decades has attracted and held productive resources, notably skilled labour and capital, that have thereby been unavailable for use in other industries. The upshot will have been reduced growth in employment and output in other parts of the economy.

In reflecting the two sides of the ‘price raising coin’, the preceding benefits and costs are largely offsetting, although they do have distributional consequences. In effect, they involve a transfer of income between different groups and sectors in the community, benefiting book producers primarily at the expense of consumers.

As well as the effects discussed above, the PIRs also have some benefits and costs that do not ‘balance out’.

### *Cultural externalities*

On the credit side of the ledger, as a consequence of increased local publishing activity and thereby a greater volume of locally authored books, there is greater portrayal of Australian events and stories through Australian eyes. While not readily quantifiable, the Commission considers that books and literature on the whole provide a range of benefits to Australians, including cultural and educational benefits, and that Australian literature has some particular benefits in these regards.

It is from the cultural and related value of Australian books that the prime case for government support for local publishing, and indeed for the PIRs, arises. Kate Grenville alluded to this point thus:

If we were producing socks or toasters the decline of a local industry would be of no importance except to the individuals involved. But if Australian writers can’t afford to go on writing (and Australian publishers can’t afford to publish us) then there will be many fewer books reflecting our unique Australian experience ... (sub. 2, p. 1)

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However, as discussed in chapter 6, for most books, most of their value will be reflected in the prices people are prepared to pay for them and the sorts of books that people purchase. It is the residual ‘unpriced’ component of books’ cultural value that represents a source of externalities for the community. While these may warrant government support for an industry, the chapter found that the externalities dependent on the PIRs are unlikely to be large.

Further, PIRs are not the only way of supporting culturally valuable Australian writing and publishing activity and the associated externalities. Thus, to help justify the retention of the PIRs, they must also be the most efficient and effective means of delivering this support.

Against this test, the PIRs clearly have significant limitations. First, as dealt with below, most of the assistance to copyright holders stemming from the PIRs leaks offshore, rather than supporting Australian works. Further, that part which flows to the Australian books industry is not particularly well targeted at these cultural externalities. This is because the support provided by the PIRs to local writing and publishing activity is not differentiated according to the cultural significance of the output concerned, and some of the support leaks to the printing industry rather than assisting writing and publishing. Moreover, as discussed below, it appears likely that subsidies are able to deliver assistance to Australian writing at much less cost than the PIRs.

### *Leakage of income*

On the debit side, because the PIRs raise the price of foreign-authored books as well as Australian-authored books, there is a leakage of income<sup>1</sup> from the Australian economy. As explained in chapter 4, some of the price increase realised by foreign-authored books in the local market will be ‘captured’ by the foreign author and/or publisher which created the work, and sold its rights to the Australian publisher or released the book here itself. In effect, the restrictions cause Australian consumers to pay higher prices which benefit not only Australian copyright holders but also foreign copyright holders.

As a share of the assistance provided by the PIRs, this leakage is substantial. The indicative estimates in appendix E are that, for every dollar of assistance that the PIRs provide to local authors and publishers in the trade sector, in the order of \$1.50 will flow to foreign authors and publishers. Put in more concrete terms, this suggests that for every \$10 million in support they deliver to Australian trade

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<sup>1</sup> Technically speaking, there is a leakage of ‘economic rent’ — returns earned from resources in excess of those necessary to induce the use of those resources in a particular activity. This leakage should be distinguished from ordinary payments for imports.

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authors and publishers, the PIRs cost Australians at least \$25 million, \$15 million of which flows offshore.<sup>2</sup> (Equivalent figures are not available for educational books.)

### *Economic efficiency costs*

A further debit is that PIRs create a range of ‘economic efficiency costs’. Within the books sector, the presence of the PIRs lessens the imperative to operate at ‘best practice’, which can result in inflated cost structures and other inefficiencies in parts of the supply chain. As noted in chapter 5, distribution is one area in which current arrangements may have limited the scope for efficiency gains. Further, the additional resources attracted into the books sector by the PIRs would most likely have produced a higher value output elsewhere. In this context, there is much evidence from other sectors that government interventions that artificially boost returns to particular activities usually lead to less efficient resource use overall (see, for example, PC 2005, chapter 4). And, as noted above, higher book prices, by curtailing some consumption, will have caused an associated reduction in consumer welfare.

### *Summing-up*

Based on the foregoing benefit-cost balance sheet, there is a strong case for reforming the PIRs. With the core copyright protection still in place to provide incentives for creative endeavour per se, the significant leakage of income overseas and the other efficiency costs of the restrictions mean that the PIRs would need to generate substantial external benefits to provide a net benefit overall. However, the externalities that are dependent on the PIRs are unlikely to be large and, in any case, the PIRs are a poorly targeted mechanism for supporting such externalities.

Some participants raised other issues they saw as relevant to assessing the merits of PIRs. These included regional development considerations, the policy stance in other countries, taxation issues, piracy concerns and environmental considerations. As discussed in appendix B, while a number of these matters are important in their own right, PIRs are not an appropriate vehicle for pursuing goals in these areas. Other policy mechanisms exist to address such matters, where intervention is warranted.

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<sup>2</sup> The draft recommendations were formulated on the basis of preliminary estimates of the income leakage to foreign copyright holders consequent upon the PIRs. In the Commission’s completed analysis (appendix E), the estimated leakage ratio is significantly higher than that estimated at the time of the discussion draft. This higher ratio adds weight to the view that removal of the PIRs would generate net benefits for Australia.

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Of more relevance is the concern to avoid unnecessarily disruptive adjustment in the local books industry, which would militate against any precipitate reform of the PIRs, but this is not a reason to maintain them in perpetuity. Further, some aspects of the current PIR regime, most notably the 7/90 day rule, are widely acknowledged to have not kept pace with technological change and modern supply timeframes.

## **7.2 The reform options**

The Commission has concluded that the PIRs require reform, and has identified a range of options, from minor changes within the existing PIR framework through to abolition of the restrictions.

As with all reform in the economy, predicting exact outcomes is difficult. Indeed, many industry participants in this study were unsure of the likely ramifications for them of changes to the current arrangements. This suggests the need for an approach to reform that takes account of the uncertainties involved. At the same time, it is important to recognise that uncertainty does not provide a justification for policy paralysis: policy decisions often must be taken with incomplete information about the impacts, and then be monitored with a view to adjusting or refining policy settings, if necessary.

With these considerations in mind, in developing its preferred approach to reform the Commission has examined the merits of the following broad approaches:

- Option 1 — limit PIR protection to a fixed time period following publication
- Option 2 — other measures to liberalise the PIRs within the existing framework
- Option 3 — repeal the PIRs and rely on consumer demand for Australian stories and narratives, in conjunction with existing subsidies, to sustain a broadly appropriate level of local writing and publishing activity
- Option 4 — replace the support for cultural externalities provided by the PIRs with a new or amended subsidy regime.

### **Option 1 — Time limited PIRs**

In the discussion draft, the Commission recommended a package of measures, the key element of which entailed limiting the period of formal PIR protection to 12 months, rather than providing it for the full term of copyright.

In formulating this draft recommendation, the Commission was cognisant of the desirability of retaining some certainty for Australian publishers to invest in works

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by local authors, and also of the desirability of generating price pressures in parts of the market where they are most lacking. The Commission envisaged that, after five years of operation, it would be appropriate to review the measure and to explore whether more comprehensive liberalisation of PIRs was warranted.

Many participants argued that the draft recommendation would have unintended effects. On the one hand, several participants provided data showing that many titles generate the bulk of their sales after the first year of publication. They also argued that sales patterns for books vary across genres, meaning that the provision of a set period of PIR protection would distort incentives between genres. In particular, a twelve month PIR period was seen as favouring relatively short-lived ‘best seller’ titles, with much less assistance for ‘slower burn’ books, including many Australian, childrens’ and educational books. On the other hand, some participants argued that the recommendation would fail to generate the downward price effects that the Commission had intended. And some indicated that the draft proposal entailed insufficient reform to bring about any substantive change in the industry. Box 7.1 contains a selection of such comments.

The Commission notes that much of the criticism from book producers was based on the presumption that local publishers could not be competitive with overseas suppliers, or would make no effort to compete (through price, service, reliability of supply and terms of trade etc) against them, after the initial period of formal PIR protection. Thus, a number of participants expressed the view that the Commission’s proposal would render investment by local publishers worthless after a year, or that it typically requires longer to recoup the investment in a title.

However, the draft recommendation was not premised on a view that the investment in titles would be able to be fully recouped from sales made during the period of PIR protection alone. Rather, it was constructed to provide a (limited) period of protection to a publisher, and thereby provide some additional certainty of returns in that period, with returns to publishers and authors after that period depending on the ability of the local edition to be able to compete against other potential sources of supply for the title. In this respect, they would have had the benefit of a first-mover advantage. It would still be the case that publishers (and authors) would need to assess whether the prospects of a book were such that its potential lifetime returns would warrant its publication.

In putting forward the time-limited PIR model in the discussion draft, the Commission was also cognisant that the sales cycle of individual titles varies to some extent and, for instance, that sales of some authors and/or titles can build over many years and sometimes be revitalised several years after their first release.

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### Box 7.1 Some criticisms of the draft recommendation

Many book producers expressed concerns about the draft recommendation, with some suggesting that its effects might be similar to those that would flow from full abolition of the PIRs. A number also criticised what they saw as its premise. For example:

If the Commission has its way, we're to operate under a system which recognises the importance of territorial copyright, but which removes it after a year because somehow the worth of a book; the value of its ideas; the importance of it, has evaporated. (Penguin, sub. DR481, p. 5)

[T]he Commission has completely underestimated the importance of backlist to publishers (both in revenue terms, and in the initial decision to acquire, and thus, invest), and have wrongly concluded that by introducing the 12 month rule, that this will somehow diminish the effect that this will have on the Book Industry as a whole .... (Hachette, sub. DR480, p. 5)

I am not entirely opposed to a defined period of certainty for local authorship, but 12 months is nowhere near long enough to provide any incentive for publishers to take the risks involved in publishing new authors, release both hardback and trade-paperback editions followed by B-format editions or to take on the expense of picture books ... (Jacinta di Mase, sub. DR434, p. 4)

As an independent publisher, Spinifex does not expect to recoup our investment in a book or an author in the first twelve months — with rare exception, the only publishers with sufficient market clout to do this are large multinational publishers. The outcome will be a 'monoculture of the mind' dominated by high-selling, fast-pulping books of the moment. This is not the way to create an identifiable and sustainable industry. (Spinifex Press, sub. DR430, p. 1)

RHA considers a windback to one-year PIRs the equivalent of a removal, in terms of impact. (Random House Australia, sub. DR550, p. 13)

[The Commission] has also failed to understand tertiary publishing cycles and that an acceptable return on investment is not achieved in one year. (Pearson, sub. DR528, p. 1)

Territorial copyright "lite" (as envisioned by the Productivity Commission) means that, after 12 months, all that investment becomes worthless as overseas competitors can dump cheap editions into Australia. (Australian Publishers Association, sub. DR513, p. 13)

Booksellers were also critical of the draft recommendation:

As the only truly multi-national retailer operating in Australia acting as an Independent, we have a unique position with insight into many open and closed markets of the world. ... The Draft Proposal — notwithstanding the marginal benefits to our business that it offers — realistically does little to improve the balance of power that currently exists within the Australian bookselling community. (Kinokuniya Bookstores of Australia, sub. DR288, p. 1)

The Commission's draft recommendation for 12 months protection of new titles [i.e the fast selling 60% of book sales] fractures the market. The slow selling backlist titles comprising the remaining 40% of the market will not provide the critical mass necessary for such efficient wholesalers to open in Australia. ... The adoption of this draft report recommendation would provide no stimulus to Australian Publishers to provide the level of logistical support and service to booksellers and ultimately book consumers available in competitive open markets. (Coalition for Cheaper Books, sub. DR509, pp. 14–15)

The shift to a twelve month period of exclusive territorial copyright and an open market for backlist is a change of the same order of magnitude as opening the market entirely. ... we see no additional downward pressure on price in reducing territorial copyright to the first twelve months of release. Indeed there would be an incentive for publishers to maximise the return from their investment during that period of certainty which could have the reverse effect. (Australian Booksellers Association, sub. DR478, p. 2)

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Some of the concerns raised by authors and publishers could in theory be addressed through a longer period of PIR-protection, such as by extending the period of protection to 24 or 36 months after a title's first publication. However, such an approach could not fully remove the distortion of incentives for the publication of different books entailed in the 12 month proposal, and it would further limit the downward price pressure that the reform would generate. Thus, it would dull incentives for substantive change in the books sector.

## **Option 2 — Reform within the existing PIR framework**

The increase in competitive pressure in the books market resulting from the 1991 reforms to the PIR regime has had some important benefits for consumers, for publishers and authors, and for the wider community.

- The changes have increased the commercial imperative for publishers to provide Australian consumers with access to new globally-released books close to the time they become available in the major overseas markets.
- Though a range of factors has contributed to the growth and changing nature of the industry over the last two decades, the 1991 reforms have clearly been influential in altering the mindset of the industry, which is now much more outward looking than before.

Through this study process, the Commission has explored various options for extending the liberalisation process within the current framework of the PIRs. Were such an approach feasible, it could reduce the adverse effects of the current arrangements while retaining some of the support that PIRs provide for the cultural externalities attaching to some local publishing and writing activity. It could also avoid many of the uncertainties and transitional costs inherent in the immediate abolition of the PIRs, while leaving scope for further reform at a later date.

However, as discussed below, none of the intermediate options identified by the Commission appear both feasible and likely to deliver significant net benefits, compared to retaining the status quo or abolishing the restrictions.

### *Modifying the 30 and 90 day rules*

A number of booksellers proposed shortening the 30 day release and 7/90 day resupply rules. Several authors and publishers also supported a shortening of the 7/90 day rule, although some expressed concern at the prospect of shortening either rule — see box 7.2.

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## Box 7.2 Participant's views on shortening the 7/90 day and 30 day rules

### *90 day resupply rule*

It is widely accepted that technological and transportation developments mean that publishers generally have the capacity to respond to requests from booksellers to supply a title almost instantaneously and meet those orders in much less than 90 days. Accordingly, to maintain the pressure on Australian publishers to provide consumers with timely access to books, many participants considered that the 7/90 day rule could be tightened. For example, Collins Booksellers contended that:

The 90 day rule is archaic and redundant given consumers' access to overseas online book retailers and the dramatic increase in publisher's air freighting stock. The 90 day rule encourages trading inefficiency and higher prices from local distributors ... (sub. 230, p. 3)

Similarly, the Text Publishing Company said that the rule:

... is now irrelevant to many publisher practices and an impediment to bookseller efficiencies. (sub. 63, p. 54)

On the other hand, Black Dog Books argued that shortening the rule could impact heavily on publishers of children's books:

From our point of view, as a representative of the children's publishing industry, much of the debate has been framed around the idea of an adult work of fiction or nonfiction text printed in black and white. We are concerned, for example, that there has been an assumption that the 90 day reprint rule has been made irrelevant by changes in technology. With the high proportion of colour in children's books and the low price points, it is necessary to print children's books in China or South-east Asia, and it takes that period of time to print and import a reprint of a picture book, especially if it has unique printing features. (sub. DR479, p. 2)

### *30 day release rule*

For the most part local authors, publishers and printers strongly endorsed continuation of the 30 day rule. In this respect, Omnibus Books called for patience, pointing out the difficulties that can sometimes arise in meeting the rule:

We live in an impatient world. Waiting for a book is not something that necessarily causes financial loss of any significance ...

Currently I have a contract with an American publisher for a very famous US author's anxiously awaited new title. This has been delayed many times for reasons known only to the author but we are now faced with the US publisher delaying the supply of files to us because they have been unable to make the work ready by the agreed deadlines. The book will now arrive in a bookstore in the USA ahead of ours purely because the US publisher can print faster than we can. We will have to work overtime to enjoy the benefit of our territorial copyright, and that is with the 30 day rule intact. Without the benefit of this protection I would have no logical reason to publish this author in an Australian edition. (sub. 173, p. 2)

However, some booksellers suggested that the 30 day rule could also be shortened. For instance, the Australian Booksellers Association argued:

... within any regulations the ABA contends that maximising speed of supply is paramount for consumers. The ABA proffers a blanket 7 day rule within those regulations supplemented by the capacity for publishers to exhaust copyright if they are not compliant with the speed of supply provisions. (sub. 172, p. 8)

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A shortening of the 30 day and 7/90 day rules would increase the scope for parallel importation if books were not made available to booksellers in a timely fashion. This would reinforce the reforms introduced in 1991.

However, a shortening of these rules, and the 7/90 day rule in particular, would represent little more than regulatory catch up with the reduction in supply timeframes made possible by technological and transportation developments. Moreover, to the extent that local publishers complied with the shorter timeframes, there would be no additional competitive pressure on book prices. And, in any case, the Commission notes that where books are published in Australia outside the formal 30 day period, publishers appear able to encourage booksellers to treat them as if they are PIR-protected. Thus, shortening the rule may have little practical effect.

#### *Limiting PIR protection to Australian-authored books*

The option of limiting the restrictions to books authored by Australians — as distinct from published in Australia — was raised in some of the early inquiries into the PIRs. Prima facie, it would provide a simple solution to the objective of reducing book prices in Australia and reducing the leakage of income abroad, while preserving some support, above that provided by an open market, for Australian-authored books.

However, while considered a ‘live’ option at the time of those early reviews, advice from the Office of International Law within the Attorney General’s Department confirms that it can now been ruled out as a generalised approach by a clause in the *Australia-US Free Trade Agreement*, which requires equivalent national treatment for Australian and US citizens in laws concerning copyright protections. The Office advised that it may in any case also breach the agreement on *Trade-Related Aspects of Intellectual Property* as well as the *Berne Convention for the Protection of Literary and Artistic Works*.

Similarly, the Office of International Law indicated that the key element of the Reedings and Gleebook’s proposal for PIR protection to be restricted to ‘Australian versions’ of books (box 7.3) would run foul of the same international treaties.

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### Box 7.3 An 'Australian version' PIR

As an alternative to shortening the 30 day and 7/90 day rules, the joint submission from Readings and Gleebooks (sub. 226, pp. 8–9) proposed an arrangement that would effectively remove the need for these requirements. The key features of their 'Australian version' PIR are as follows:

- Protection for a work would be established by the publication of an 'Australian edition' of the work, and could be obtained at any time.
- Until publication of an Australian version, any legal edition of a work could be imported.
- If the Australian version of a title became unavailable for any reason, any legal edition could be imported until the Australian version was available again.
- Competing editions could be imported at the request of a customer in a reasonable quantity (including multiple copies for book clubs, libraries etc.).
- Booksellers could list alternative editions and their prices but not stock them where an Australian edition was available.

Readings and Gleebooks went on to argue that:

The above features would introduce clarity to the current legislation ... The need for the 30/90 day rule is done away with. There is a real incentive for publishers to keep Australian booksellers informed about publishing programs, publish as close to original publishing date as possible, and to keep titles in stock. The ability to list alternative editions introduces some transparency to the way books are priced in this market. (sub. 226, p. 9)

### *A price-cap arrangement*

Drawing on the PIR regime applying in Canada (box 7.4), the Australian Booksellers Association (subs. 172, DR478) and some other booksellers advocated the introduction of a price-cap scheme which would limit the amount by which the Australian prices of titles protected by PIRs could exceed those of foreign editions in overseas markets, in order to maintain their protection. Although noting that in Canada the price cap only applies to imported books, REDgroup Retail argued in its submission that:

A requirement for both domestic and imported editions to meet a maximum pricing differential with foreign editions would subject more books in the Australian market to ... competitive pricing pressure. Australian booksellers would have an ability to shop elsewhere for stock if faced with an inefficient local supplier. (sub. 175, p. 4)

In principle, such a system would preserve the scope for the prices of PIR-protected books to be lower in Australia than overseas, while limiting any upside difference.

REDgroup Retail noted in its original submission (sub. 175, p. 2) that the goal of such a scheme was to balance a range of performance and overseas parity pricing

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#### **Box 7.4 Canadian book pricing laws**

Like Australia, Canada restricts the parallel importation of books if certain requirements are met by local suppliers. Protection under the Canadian Book Importation Regulations 1999 differs between a 'Canadian edition' of a book, and an imported book that has a Canadian exclusive distribution arrangement.

A 'Canadian edition' is an edition published in Canada under a separate rights agreement. This is similar to the way Australian publishers mostly operate – purchasing the 'Australian rights' to a foreign authored book, and then releasing an edition for the Australian market. An 'imported book' is one that is physically brought into Canada and released by an exclusive distributor.

Imported books in Canada must meet a number of service and price requirements in order to maintain parallel importation protection. If a book is imported into Canada from the United States, the imported book must be supplied at a price no greater than the US list price (converted to Canadian dollars at the current exchange rate), plus 10 per cent of the price after conversion, less any applicable discounts. If a book is imported from any other country then the same requirements apply, except that the allowable price difference is 15 per cent. If the Canadian price exceeds the allowable margin, then a bookseller may parallel import the title.

Authors, publishers and exclusive distributors are able to enforce their copyright against breaches of the parallel importation laws by booksellers through a range of civil enforcement provisions, including injunctions to prevent further breaches, and possible financial compensation for lost profits.

requirements against the guarantee of turnover through Australian publishers. An Australian publisher whose titles met the requirements of the system would be assured of the Australian sales of those titles. This would alleviate some of the concerns raised by many publishers in their submissions, who have argued that publishing is a portfolio business, where the revenue from profitable titles supports the infrastructure costs that enable them to publish more marginal titles. And it would do so while limiting the scope for the importation of culturally re-edited foreign editions of Australian works, which might occur to some extent in the absence of PIRs.

At the same time, there are some important differences between Canada and Australia that would affect the working of the model. For example, Canada's close proximity to the US means that US publishers, rather than separately publishing a US-authored title in Canada, may instead add supply for the Canadian market onto a US print run, and then send those physical books over the border. Thus, for US authored titles, Canadians are much more likely to have the actual US version of the book supplied in their domestic market, rather than a 'Canadian edition'. In

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comparison to Canadian publishers, Australian publishers have greater ‘natural protection’ from import competition from the US.

Issues to be answered in devising a price-cap PIR scheme for Australia would include:

- to which titles the price-cap arrangements would apply — for example, only those for which an Australian publisher had purchased the Australian rights, or also those supplied under a local distribution agreement
- what is the allowable percentage by which Australian prices could exceed the foreign wholesale price in order to maintain PIR protection, and how this might vary from country to country
- how the arrangements would take account of variations in book format, particularly if the first available Australian format (such as a C format release) is not available anywhere else in the world
- whether and how the arrangements would take account of changes in exchange rates (for example, to add pricing pressure to local publishers when the Australian dollar is low) and the availability of remaindered versions of books overseas available for potential import at very low prices.

In responding to some of these potential issues, Malcolm Neil (CEO, Australian Booksellers Association) noted that the Canadian price-cap scheme was the result of industry negotiation on the optimal balance of these issues between publishers and booksellers. Mr Neil advised that similar negotiations would be required amongst Australian market participants (pers. comm., 31 May 2009).

The approach has not been embraced by all industry participants. The Australian Publishers Association observed that such requirements would take regulatory intrusion in the books market to a new and undesirable level:

The Canadian system is an example of a much more regulated environment, which seeks to replace competition within a copyright sector with a much more onerous set of price controls and other interventions. (sub. 244, p. 54)

Nor is it clear that a price-cap approach would deliver significant net benefits, compared to more robust reform options. Firstly, a price-cap scheme could lead to ‘focal point’ pricing by publishers, where the price of most books would be set at just below the cap, in order to retain exclusive rights over them. While this may reduce the price of some books, it could at times also increase the price of others. Secondly, rules to limit the impact of remainders may deny booksellers and consumers some significant opportunities for savings. Thirdly, as alluded to above, any such scheme would involve administrative complexity, particularly in relation to the question of equivalent formats and the variability of pricing across individual transactions (for example, due to the quantity ordered, or pre-existing commercial

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relationships). And finally, to the extent that such a scheme continued to provide assistance to copyright holders, the assistance would not be differentiated according to the cultural value of different books and a significant proportion of it would continue to leak offshore.

### *A package of measures?*

Were the PIRs to be retained broadly in their current form, there would be merit in tightening at least the 90 day resupply rule. While the Commission recognises that demand for books can be difficult to predict, that printing ‘slots’ are not always available at short notice, and that off-shore printing can require longer lead times than printing undertaken locally, it does not consider that such difficulties warrant the retention of measures that significantly impede booksellers from offering a continuous supply of books that their customers want (and that their local competitors may still have in stock). On balance, the Commission considers that tightening the rule would most practically be achieved by modifying the time periods in the existing provisions. Recognising the arbitrary nature of the timeframes involved, the 7 day element could be modified to the end of the next business day, and the 90 day element could be reduced to one week.

The Commission also sees merit in the Gleebooks and Readings proposals (box 7.3) under which:

- booksellers could list alternative editions and their prices, but not stock them where an Australian PIR-protected edition was available
- alternative editions could be imported at the request of a customer in a ‘reasonable’ quantity (including multiple copies for book clubs, libraries etc.).

There would also be merit in allowing booksellers to formally aggregate single customer orders for books from abroad, as proposed in the discussion draft.

The Commission sees less of a case for tinkering with the 30 day release rule. While the rule can in some instances cause local booksellers to lose some sales to overseas online booksellers, the practical effect of tightening the rule on prices would, as noted above, be quite limited, although doing so could cause some (costly) adjustments to production and shipping arrangements, particularly in cases where off-shore printing is involved.

A price-cap scheme could potentially deliver greater benefits, although these would depend crucially on the details of the scheme’s design. Were the current regime to be retained, there would be a case for considering adoption of such a scheme, whether alone or in conjunction with the other changes nominated above.

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### **Option 3 — Abolition of the PIRs**

There are strong arguments for the full abolition of PIRs. While Australia derives considerable cultural benefits from local publishing and writing activity, the externalities dependent on the PIRs are unlikely to be large. Yet it is the externalities — and not the overall cultural value of the outputs of the local books industry — which provide the rationale for government assistance.

Australian governments already provide direct financial support to local authors and publishers in recognition of the cultural benefits that some of that activity generates (chapter 3) and the bulk of locally authored and published works — namely those for which separate foreign rights have not been sold and foreign editions published — would face little or no direct threat by parallel imports in the absence of the PIRs. Further, as discussed below, subsidies could more efficiently deliver support for the books sector, in recognition of the cultural externalities it generates, were such support deemed necessary in the absence of PIRs. Given this, the question arises as to whether the PIRs should immediately be abolished.

While having merit, abolition could, by itself, entail some material costs and risks. Though the benefits of reforms persist over the long term, such adjustment costs must be factored into the reform calculus (see PC 2000).

In line with reforms in other industries, this implies that consideration would need to be given to the provision of assistance or a period of forward notice, to allow the industry to adjust to the change.

### **Option 4 — Subsidies for Australian works**

Direct subsidies to publishers or authors can provide support for cultural externalities, to the extent that such support is necessary. Compared to PIRs, subsidies have a number of in-principle attractions.

- Notionally at least, subsidies can be better linked than PIRs to the perceived level and nature of the cultural externalities meriting support.
- Subsidy support can also be more easily limited to Australian publishers or authors, thereby avoiding or reducing the substantial leakage of support overseas that occurs under PIRs.
- In being funded from taxation revenue, subsidy support is transparent and its magnitude readily apparent. And it is drawn from across the community in keeping with the broadly-based nature of the cultural externalities.

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However, there is clearly considerable opposition amongst authors and some publishers to this approach, with a common concern being that it would remove their apparent self sufficiency and instead make them dependent on payments from the budgetary process. For example, Tim Winton contended:

People like myself appreciate the support of government, but like anybody else we prefer to make our living by getting fair recompense for our labour in a marketplace that's productive, fair and sustainable. (sub. 204, p. 14)

Katharine England argued:

A move from a flourishing, if protected industry back to the support of local culture through handouts seems a very retrograde step indeed. (sub. 137, p. 2)

And even more strongly, the Australian Literary Agents' Association said it was:

... very concerned by the suggestion in the Issues Paper that perhaps subsidies could 'provide similar benefits for Australian authors/publishers as the parallel import restrictions'. The very notion that a successful, energetic and efficient industry would be disbanded and funded by the taxpayer is bizarre ... (sub. 124, p. 11)

However, as alluded to above, the choice in this context is not between allowing an industry to thrive on its commercial merits or turning it into a constituency of mendicants. Rather, it is a choice between explicit taxpayer support for the cultural externalities associated with Australian publishing and writing or a private, implicit, tax on book consumers, underpinned by the PIRs. That choice should be dictated by the intrinsic advantages and disadvantages of the two forms of support.

A further objection raised by authors is the potential vulnerability of subsidy support to short term fiscal policies. In this regard, Thomas Keneally contended that a subsidy of sufficient magnitude to replace the PIRs:

... is unlikely to be politically viable, guaranteed or permanent. Would such a subsidy survive economic downturns, razor gangs, changes of policy and of government? (sub. 16, p. 7)

Similarly, Kate Grenville argued:

There are issues of supply — government funds will never be enough to support all the writers or books that deserve to be supported, and in any case, such funds would be dependent on the vagaries of government policy and budgets. (sub. 68, p. 4)

However, periodic scrutiny of subsidies to ensure they remain relevant and appropriate is clearly desirable. And alternative mechanisms can and should be subject to similar scrutiny — as the frequent reviews of the PIRs over the last two decades illustrate.

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Further, the subsidy approach cannot be quickly dismissed as a step into the unknown. As noted, support is already provided to the industry in this way — including through grants by the Australia Council for the Arts (see box F.1 in appendix F). Also, the subsidy approach has been used in other countries, most notably in Canada where substantial sums are paid under the long-standing Book Publishing Industry Development Program (box F.4).

It is also important to recognise that subsidies can take various forms. A number of participants, while welcoming any government support provided for literature, were critical of the ‘beauty contest’ model, wherein a panel of assessors decide which works warrant grants and which do not. However, subsidy funding can also be allocated on the basis of more objective, pre-determined criteria. Moreover, a sales-based subsidy, for example, would likely mimic many of the incentives (for the publishing of Australian works) of the PIRs.

Subsidies are used in a number of markets to address externalities, and the Commission can see no valid ‘a priori’ argument as to why public support for the externalities associated with Australian writing should not also take this form.

That said, a range of design issues can bear on the efficiency and effectiveness of subsidy arrangements. To assist in assessing the practical merits of the subsidy approach, the Commission canvassed some of these in the discussion draft. Appendix F expands that work, highlighting some design options that would need to be considered in maximising the cultural externalities generated by a subsidy scheme while rendering it practically workable and administratively efficient.

While detailed analysis would be required to determine the most efficient and effective means of delivering subsidies for Australian works, such subsidies should be able to be administered at a reasonably low cost. For example, the major component of the Canadian scheme disbursed around A\$30 million to publishers in 2007-08, with administration costs of around A\$1 million (equivalent to 3 per cent of the entitlements). This compares favourably to the PIRs, for which indicative estimates (appendix E) are that 60 per cent of the assistance for copyright holders provided via higher trade book prices leaks offshore, and a further amount supports the local printing industry.

Although this suggests that subsidies are potentially a much more cost-effective mechanism for assisting local works than the PIRs, two considerations militate against recommending the adoption of subsidies *as a replacement* for the assistance provided by PIRs. First, given that there is uncertainty about the magnitude of the price raising impact of the PIRs, setting an appropriate subsidy rate to replicate the assistance provided by PIRs would be problematic. Second, implementing a new subsidy regime would in some senses validate ongoing support for cultural

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externalities beyond that provided through other funding programs. However, as indicated earlier, the external benefits dependent on the PIRs are unlikely to be large. This suggests that significant additional support may not be warranted, at least insofar as the objective is to cater for cultural externalities (as distinct from assisting local publishing or printing activities).

### **7.3 The Commission's preferred approach**

Reform of the current arrangements is clearly desirable, to address: the upward pressure on book prices; the restrictions imposed on the commercial decisions of booksellers; and the poor targeting of assistance to the cultural externalities generated by some Australian works, including the leakage of much of its value offshore.

Whereas the draft recommendation was for the partial liberalisation of the PIRs, the Commission's further analysis suggests that, of the viable options, full liberalisation combined with appropriate subsidy arrangements would proffer greater net benefits. Other 'intermediate' reform options, such as shortening the 7/90 day rule and the introduction of price-capping arrangements, could also have some net benefits, but they are unlikely to be as significant.

Accordingly, the Commission recommends that the government terminate the PIRs, with three years forward notice to be provided to allow the industry to plan for, and begin adjusting to, the new environment.

It also recommends that, when announcing this change, the government initiate a review of the totality of financial assistance for Australian writing and publishing. This will provide an opportunity to consider more closely the efficacy of existing arrangements and whether they might be improved. Among other things, it would be appropriate to examine the case for changing some of the current subsidies to more directly support outputs that generate cultural externalities (appendix F).

While the Commission judges that these reforms would generate net benefits for Australia as a whole, the specific impact on Australian publishing would depend on the extent to which local publishers could supply local booksellers with books desired by Australian consumers at a price and terms competitive with foreign sources of supply. Similarly, the impact on local book printers would depend largely on their competitiveness relative to alternative sources of supply. In both cases, the industries have a degree of natural protection in their favour.

As set out in chapter 5, the Commission would expect abolition of the PIRs, of itself, to result in some contraction or slowing in the growth in the book production industry, and/or reductions in the income levels of some of those in the industry. Similar

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effects have occurred in several other industries where the government has removed import protections or restrictions on competition, at least in the years immediately following those reforms.

However, the extent of the pending contraction has often been overstated by those in sectors facing reform. Indeed, at the time of the 1991 reforms to the PIRs, the book industry itself was initially very cautious, with some sounding warnings about the impending impacts. Although those concerns may have been genuinely held, they did not prove to be warranted, and the industry has grown substantially over the intervening period. Similarly, while removal of the PIRs should see an increase in imported books where these represent better value, the Commission expects that most Australian publishers, including the major publishing houses, would generally adapt to the new regime, that Australian stories and content will continue to be demanded and that talented and marketable Australian authors would continue to be widely published.

In this context, it is not clear that any reductions in the growth of publishing in Australia from its current base, that would result from abolition of the PIRs, would be sufficient to entail a significant foregoing of cultural externalities. And in regard to those externalities, there would be continuing and potentially more effective subsidy support.

Nevertheless, there inevitably remains some uncertainty about how the structure of the industry would change following the abolition of PIRs and any modification to the current subsidy arrangements, and how this would affect the cultural externalities the industry generates. Accordingly, the Commission recommends that the industry's assistance be reviewed again five years after the abolition of the PIRs. To assist in this review, the ABS should revise and update its 2003-04 surveys on the books industry and market, and update them again prior to the later review.

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# APPENDICES



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# A Public consultation

This appendix details the public consultation processes employed during the study, and lists the organisations and individuals that have participated.

Following the receipt of the terms of reference in November 2008, the Commission advertised the study in national and metropolitan newspapers, and an initial circular announcing the study was distributed to interested parties. The Commission released an issues paper on 26 November 2008 to assist participants in preparing their submissions.

272 submissions were received prior to the Commission's discussion draft, which was released on 20 March 2008. A further 288 submissions were received in response to the draft. All submissions received by the Commission during the study are listed in table A.1.

The Commission met with a number of industry stakeholders, including authors, publishers, printers, booksellers, peak industry associations and government departments; both before and after the release of the discussion draft. A list of those meetings is at table A.2.

In addition, the Commission held roundtables in Melbourne and Sydney to discuss the discussion draft in April 2009. A list of participants at the roundtables is at table A.3. The Commission also followed up with a number of participants after the roundtables to clarify particular issues.

**Table A.1 Submissions received**

<i>Participants</i>	<i>Submission no.</i>
Abbeys Bookshops	DR449
Abela, Deborah	35, DR324
Abidi, Azhar	162
ADCC Publications	DR417
Aesop's Attic Bookshop	133
All Good Book Store	DR373
Allen & Unwin	214, DR360
Allen, Pamela	09

*(Continued next page)*

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**Table A.1 continued**

<i>Participants</i>	<i>Submission no.</i>
Allington, Patrick	DR469
Allkotes	92
Andrew, Kathy	DR437
Antoniou, Daisy	111
Apel, Kathryn	DR281
Ashley, Ali	DR532
Association of American Publishers	156
Australian Booksellers Association	172, DR478
Australian Competition & Consumer Commission	260
Australian Copyright Council	249
Australian Industry Group	272
Australian Literary Agents' Association	124, DR396
Australian Manufacturing Worker's Union	97, DR357
Australian Publishers Association	244, DR512, DR513, DR560
Australian School Library Association	228
Australian Society of Authors	70, 118, DR330
Avenue Bookstore	DR548
Avid Reader Bookshop	DR371
Backroom Press	213
Baker, Boyd	DR300
Ball, Duncan	105*
Base, Graeme	DR291
Bates, Dianne	19, 93
Bauer, Michael Gerard	186
Bartak, Meryl and David	246
Becker, R	271
Beeches Bookshop	DR537
Bell, Chris	DR327
Bell, Gail	259
Benn's Books	DR545
Bettanin, Donica	DR400
Better Read Than Dead	DR476
Between the Lines Bookshop	DR362
Bini, Michelle	DR488
Black Dog Books	257, DR479
Black Inc	113
Blackford, Dr Russell	43
Blainey, Geoffrey	DR365

*(Continued next page)*

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**Table A.1 continued**

<i>Participants</i>	<i>Submission no.</i>
Blyth, Toby	DR505
Bongers, Christine	95, DR523
Book Bonding	DR382
Book Industry Training	198
Book Publishers Association of New Zealand	166, DR457
Box Hill Institute of TAFE Bookshop	DR280
Brandl & Schlesinger	262, DR403
Braude, Sandra Lee	225
Braxton, Barbara	DR503
Brays Books	DR546
Brian, Janeen	13
Bright Books Pty Ltd	251*
Britt, Jo-Anne	41
Brooks, Karen	DR310
Brooks, Ron	180
Broome, Errol	DR472
Broughton, Belinda	DR489
Bryson, John	25
Bunworth, John	DR559
Byrne, Jennifer	DR422
Cambridge University Press	DR445
Cannold, Leslie	DR531
Carey, Peter	158
Carthew, Mark	258, DR338
Caswell, Brian	DR385
Cat MacInnes Illustrations	167
Cengage Learning Australia	52, DR282
Cheng, Christopher	DR482
Children's Book Council of Australia	71
Christie, Moira	DR366
Ciddor, Anna	235
Clarke, John	195
Clode, Dr Danielle	140, DR276
Coalition For Cheaper Books	DR509
Coffee Training Centre	DR426
Cole, Darren	04
Collins Booksellers	230
Concept Economics	DR543

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**Table A.1 continued**

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<i>Participants</i>	<i>Submission no.</i>
Connelly, Graeme	60
Cooke, Kaz	DR284
Cookes, J E	DR395
Cooper, Michelle	36
Copyright Agency Limited	199
Council of Australian University Librarians	227
Cousland, Cate	DR350
Crabbe, Kay	DR344
Create a Kids Book	224
Croggon, Alison	DR332
Croome, Helen	50
Culkin Lawrence, Teresa	DR348
Cunningham, Ann	233
Cunxin, Li	DR299
Curringa Communications	53
Curtain, Eleanor	DR407
Curtis Brown (Aust)	73, DR380
Cusack, Louise	DR311
DA Information Services	117, 268
Dalgliesh, Janette	152
Daly, Joy	81
Damon, Anne	DR412
Davies, Will	30
Davis, Dr Joseph	136
Day, Norie Wah	108
Denise Ryan Associates	DR473
Dennis Jones & Associates	146
Denton, Terry	145
Dimasi, Jacinta	DR533
Disher, Garry	24
Doherty, Peter C	237
Donoughue, Peter	08, DR273
Doraisamy, Denise	DR392
Dowse, Sara	107
Draper MP, Peter	151
Eagar, Kristy	157
Earls, Nick	17, DR339
East Street Publications	121

*(Continued next page)*

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**Table A.1 continued**

<i>Participants</i>	<i>Submission no.</i>
Eberle, Katie	DR293
Eleanor Dark Foundation	120
Elsey, Lynn	32
England, Katharine	137
Era Publications	54, DR409
Evans, Helen	80
Falkiner, Dr Suzanne	94
Faulkner, Carol	177
Fenton, Corinne	83, DR325
Field, Judith and Martin	231
Fienberg, Anna	DR391
Finch Publishing	112, DR401
Flaherty, Liz	DR283
Flanagan, John	98, DR322
Flannery, Michael John	DR557
Flannery, Tim	58
Ford Street Publishing	134, DR453
Forster, Clare	DR455
Foster's Little Bookshop	DR444
Fox, Mem	DR542
Freeman, Pamela	03
Fremantle Arts Centre Press Incorporated	66
Fremantle Press	DR540
French, Jackie	132
Fussell, Sandy	DR386
Gallagher, Patrick	200
Gallagher, Peter	DR275
Gans, Prof Joshua	DR279
Germein, Katrina	DR492
Gervay, Susanne	126
Ginsberg, Jenny	DR466
Giramondo Publishing Company	DR411
Gleeson, Libby	67, DR329
Gleitzman, Morris	85, DR341
Golvan Arts Management	DR468
Gould, Sally	DR331
Graham, Amanda	253
Grant, Virginia	DR462

*(Continued next page)*

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**Table A.1 continued**

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<i>Participants</i>	<i>Submission no.</i>
Greef, Elizabeth	DR297
Green, Jerome	DR292
Greive, Bradley Trevor	88
Grenville, Kate	02, 68, DR315
Griffin Press	205*, DR439
Griffiths, Andy	164, DR383
Griffiths, Michelle	DR359
Grootemaat, Pam	DR470
Gwyther, Sheryl	51, DR316
Hachette Australia	232*, DR480
Hamilton AO, Margaret	174
Hanscamp, Stephanie	DR511
Hardie Grant Publishing	65
Harland, Richard	DR317
Harlequin Enterprises (Aust)	239*, DR413
Harmer, Wendy	DR363
HarperCollins Publishers Australia	190*, 269, DR450
Harris, Christine	DR337
Harris, Claire	183
Harris, David	159, DR336
Hartnett, Sonya	161
Hawke, Rosanne	142
Hayton, Morgan	DR306*
Healy, Kim	210
Heaslip, Tanya	DR487
Heffernan, John	DR460
Herbert, Tim	33
Herrick, Steven	74
Hill, David	229
Hills, Lia	DR446
Hilton, Margot	11
Holfeld, Greg	149
Honeywill, Ross	DR456
Hooper, Chloe	240, DR508
Hornsey, Chris	184
Horrocks, Ian	20, DR335
Houbain, Lolo	DR501
Howell, Katherine	DR326

*(Continued next page)*

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**Table A.1 continued**

<i>Participants</i>	<i>Submission no.</i>
Hudson Publishing	104
Hull, Deb	DR303
Hunt A Book	DR539
Hurst, Elise	187
Hutchins, Elizabeth	128
Inkwell Management, NY	47
Insight Publications	215
Institute of Public Affairs	DR555
Interactive Publications	84, DR408
International Publishers Association	242
Irvine, Ian	203, DR342
Irwin, Stephen M	DR319
J. L. Lennard Graphics	115*
Jacinta di Mase Management	DR434
Jackson, Pamela	DR517
Jacobs, Anna	DR451
James, Ann	234
Jeffreys Books	DR547
Jenny Darling & Associates	185
Jo Scott Publishing	DR428
John Garratt Publishing	DR521
John Reed Book Distribution	23
John Wiley & Sons Australia	169, DR502
Johnson, Mo	DR404
Johnson, Susan	78
Joint Submission – ADA, ALCC and ALIA	252
Joint Submission – Readings and Gleebooks	226, DR474
Joint Submission – Steven Gibbons MP, Joe Helper and Chris Meddows-Taylor	DR554
JoJo Publishing	DR515
Jolly, Erica	109, DR496
Jones, Carol	DR274
Jonsberg, Barry	182
Jordan, Toni	26, DR296
Jose, Prof Nicholas	241
Kalimeris, Lita	123
Kandelaars, Deb	DR497
Keenan, Michael	DR277
Kelly, Vivienne	55

*(Continued next page)*

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**Table A.1 continued**

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<i>Participants</i>	<i>Submission no.</i>
Keneally, Thomas	16
Kennett, David	150
Kent, Jacqueline	171
Kimberley, Maree	DR301
Kinokuniya Bookstores of Australia	06, DR288
Koala Books	196
Krajcar, Eddy	248
Lambert, Leesa	DR519
Lane, Kerri	DR534
Law Institute of Victoria	DR504
Lawrinson, Julia	DR312
Lawson, Sue	DR304
le Bas de Plumetot, Amanda	DR527
Le, Nam	DR358
Leading Edge Books	254, DR388
Learning Logic Publishing	DR421
Lennon, Tracey	DR258
Lester, Alison	DR431
Ligare Pty Ltd	76, DR347
Lilley, Sharyn	DR454
Lionetto-Civa, Angie	DR333
Little Hare Books	144
Lonely Planet Publications	69, DR452
Lucas, Melissa	DR308
Lucy, Judith	DR440
MacDibble, Bren	46, DR447
Maclean's Booksellers	DR438
Macmillan Publishers Australia	236*, DR506*
Magabala Books Aboriginal Corporation	188
Mair, Rebecca	DR309
Maloney, Shane	206
Marchetta, Melina	DR415
Marwood, Lorraine	45, DR321
Mary Ryan's Bookshop & ABC Centre	DR378
Mary Who? Bookshop	197, DR549
Mason, Renee	DR429
Masson, Sophie	72, DR286
Matthews, Cecily	DR278

*(Continued next page)*

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**Table A.1 continued**

<i>Participants</i>	<i>Submission no.</i>
Mattingley AO, Christobel	192, DR522
May, Lois	07
McCalman, Ian	DR389
McGowan, Michelle	176
McGraw-Hill Australia	163, DR483
McGuinness, Sharon	DR420
McInerney, Monica	79, DR397
McIntosh, Fiona	DR361
McKenzie, Dr Margaret	211
McKinlay, Meg	DR458
McMullin, Neridah	130
McPherson's Printing	168*, DR367
Melbourne University Publishing	DR465
Midwood, Margaret	DR494
Miller, Susan	DR514
Mobbs, Barbara	114
Moirs Bookshop	DR379
Moody, Linda	194
Moorhouse, Frank	103
Moriarty, Jaelyn	DR475
Morrison, Reg	48
Morrison, Robert D	01
Morrissey, Di	265
Mottram, Maggie and Anne Winkless	266
Mudgee Bookshop	DR381
Mulligan, David	DR345
Murdoch Books	77, DR387
Murphy, Julie	DR318
Murphy, Nicole R.	147
Murphy, Sally	125, DR394
Musgrove, Marianne	179, DR298
Nader, Jonar	DR289
Nahrung, Jason	62
National & State Libraries Australasia	264
National Union of Workers – Victorian Branch	267
Neal, Julie	148
Nickerson, Julie	DR441
Nilsson, Lena	223

*(Continued next page)*

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**Table A.1 continued**

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<i>Participants</i>	<i>Submission no.</i>
Nix, Garth	102, DR484
Noigroup Publications	DR525
Nordora Publications International	DR499
NSW Government	DR485
Nunn, Judy	37
Odgers, Sally	202
O'Donnell, Carol	263
O'Flynn, Mark	14
Omnibus Books	173, DR529
One Goat Creative	DR425
Opie, Robyn	178, DR459
Orr, Wendy	56
Osborne, Dianne	96
Ouston, Elaine	129
Owen, Jessica	DR507
Oxford University Press – Australia	42
Page Thirteen	209
Pages & Pages Booksellers	DR448
Paperback Bookshop	DR538
Parker, Michael	101
Pascoe, Bruce	154
Pass It On – Online Networking Newsletter	DR314
Patterson Lakes Bookshop	DR376
Pearson Australia	119, DR528
Pearson, A	21
Penguin Group (Australia)	212, DR481
Perlman, Elliot	DR351
Pettit, Meredith	DR419
Phillips, Sylvia	141
Post, Geraldine	DR328
Potts, Natalie J E	131
Poulter, Jennifer R	DR354
Printing Industries Association of Australia	106, DR356
Protectaprint Pty Ltd	153
Public Libraries of NSW – Country	100
QBD The Bookshop	99, DR370
Queensland Writers Centre	219
Quin, Jill	DR399

*(Continued next page)*

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**Table A.1 continued**

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<i>Participants</i>	<i>Submission no.</i>
Quinn, Elizabeth	59
Rackham, Kim	DR414
Random House Australia	193, DR550
Random House India	87
Ratliff, Deborah	DR340
Read A Lot Books	DR535
Read How You Want	245, DR464
REDgroup retail	175*, DR471
Reilly, Matthew	57
Reservoir Writers and Reciters	DR486
RIC Publications	DR518
Richard Smart Publishing	49, DR290
Ridge, Judith	217
River Tales Bookshop	DR377
Roberts, Ted	89
Robertson, Jack	DR432
Rose, Peter	DR436
Rosetta Books	DR374
Rossi, Bernard J	27
Rowe, Jennifer	250
Roy, James	DR372
Roy, Stacey	DR498
Royal Society for the Blind of SA Inc	90
Rushby, Allison	44
Rushby, Pamela	31
Russon, Penni	261
Sally Milner Publishing	221, DR352
Saxby, Claire	29
Scribe Publications	122, DR334
Seib, A	DR287
Shapcott AO, Thomas	05
Shearer's On Norton	DR393
Shires, Matthew	DR320
Sidebottom MP, Sid	91
Simon & Schuster Australia	243, DR490
Simons, Moyra	DR305
Sly, Alison	139
Smith, Josiane	DR390

*(Continued next page)*

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**Table A.1 continued**

<i>Participants</i>	<i>Submission no.</i>
Smith, Vanessa	DR285
Smyth, Courtney	DR435
Smyth, Kim	127
South Australian Government	201
Spinifex Press	61, DR430
Spudvilas, Anne	DR418
St Scholastica's Primary School	DR427
Stanton, Vicki	DR302
Stapleton, Bethany	DR495
Stein, Shannon	DR477
Stingart	DR433
Storrs, Graham	22
Sunde, Angela and Rob Brown	155, DR406
Tan, Shaun	34
Tasker, Mel	135
Tatti, Serena	DR491
Taylor, Peter	247, DR461
Taylor-Waters, Jayne	DR524
Temple, Peter	238
The Brunswick Street Bookshop	DR541
The Cameron Creswell Agency	160, DR398
The Children's Book Council of Australia	DR313
The Cookery Book	DR544
The Drummond Agency	DR368
The Mary Cunnane Agency	170, DR516
The Naher Agency	DR375
The New Zealand Society of Authors	28
The Scribo Group	208, DR349
The Shadow Lands	82
The Text Publishing Company	63, DR442
Thesaurus Books	DR443
Thompson, Jo	DR510
Thumbprint – Illustration and Design	222
Tierney, Nicola	DR307
Toltz, Steve	DR536
Toombs, Daphne	DR500
Train, Tim	DR346
Tranter, Lyn	75, DR294

*(Continued next page)*

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**Table A.1 continued**

<i>Participants</i>	<i>Submission no.</i>
Trevaskis, Ian	181, DR353
Trewin, Trudie	39, DR405
Tulloch, Richard	DR424
Tyrrell, John	191
University Co-operative Bookshop Limited (The Co-op Bookshop)	216
University of Melbourne Book Industry Study	DR526
University of Queensland Press	255
Van Gendt Stomann, Katrina	165
Van Twest, Sybil	DR369, DR530
Venables, Bruce	38
Victorian Government	270
Walker Books Australia	256, DR416
Ward, Jan	DR556
Ward, Lynn	DR402
Wasik, Lilian	DR553
Watts, Margaret	110
Wheatley, Nadia	189
White, Dee	15, DR384
Whiting, Sue	138, DR467
Whittle, Cate	DR343
Whittle, Catherine M	116
Wignell, Edel	40
Wild & Woolley	86, DR410
Wilkins, Dr Kim	12, DR295
Wilkins, Paul	DR493
Williams, Sean	18
Wilson, Tony	10
Winkless, Anne	266
Winton, Tim	204, DR355
Witkowski, Bernice	207
Wolfender, Dianne	DR552
Wolfer, Dianne	DR364
Working Title Press	143, DR463
Yen, Jacqueline	DR551
Zarcinas, Scott	DR520
Zephyr Music	64, DR323
Zeus Publications Australia	DR423
Ziersch, Nahum	220

\* Denotes submissions presented in confidence.

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**Table A.2 Visits and meetings**

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**Participants**

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**Australian Capital Territory**

Australian Library and Information Association  
Department of the Environment, Water, Heritage and the Arts  
Kate Grenville \*

**New South Wales**

Allen & Unwin  
Australia Council for the Arts  
Australian Booksellers Association  
Australian Copyright Council  
Australian Publishers Association  
Australian Society of Authors  
Coalition for Cheaper Books \*  
Copyright Agency Limited  
Dymocks Booksellers  
Garth Nix \*  
Hachette Livre Australia  
HarperCollins Publishers \*  
Leading Edge Books  
McGraw Hill Australia  
Printing Industries Association of Australia  
Random House Australia \*  
Simon & Schuster Australia  
The Nielsen Company

**Queensland**

John Wiley & Sons Australia \*

**Victoria**

Angus & Robertson Booksellers  
Australian Campus Booksellers Association  
Australian Competition and Consumer Commission  
Australian Literary Agents' Association  
Black Inc  
Bloom Partners

*(Continued next page)*

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**Table A.2 continued**

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***Participants***

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Cengage Publishing

Macmillan Publishers Australia \*

McPherson Press

Penguin Group (Australia)

Peter Donoughue

Readings Booksellers \*

REDgroup retail \*

Scribe Publications Pty Ltd

Shane Maloney

Target

The Text Publishing Company \*

Thorpe-Bowker

Wilkins Farago

**South Australia**

Griffin Press

**New Zealand**

Ministry of Economic Development

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\* Indicates that the Commission had an additional meeting or teleconference with the participant following the discussion draft.

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**Table A.3 Roundtable participants**

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*Participants*

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**Melbourne - 7 April 2009**

Australian Bookseller's Association  
Australian Campus Bookseller's Association  
Australian Library and Information Association  
Australian Literary Agents' Association  
Australian Manufacturing Worker's Union  
Big W  
Black Dog Books  
Cengage Learning Australia  
Council of Australian University Librarians  
DA Information Services  
Dee White  
Elsevier  
Encompass Books  
Griffin Press  
Hachette Australia  
Hardie Grant  
McGraw-Hill  
McPherson's Printing Group  
Morris Gleitzman  
Melbourne University Press  
Pearson Australia  
Penguin Group  
Peter Donoughue  
Prof Bryan Lukas  
QBD The Bookshop  
Readings  
REDgroup Retail  
Scribe Publications  
The Co-op Bookshop  
The Text Publishing Company  
Thorpe Bowker  
Toni Jordan

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*(Continued next page)*

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**Table A.3 continued**

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*Participants*

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**Sydney - 8 April 2009**

Allen & Unwin

Australian Publisher's Association

Australian Society of Authors

Booktopia

Children's Book Council of Australia

Coalition for Cheaper Books

Concept Economics

Copyright Agency Limited

Garth Nix

Kinokuniya Bookstore

Leading Edge Books

Ligare Book Printing

Murdoch Books

Pamela Freeman

Printing Industries Association of Australia

Rob Pullan

Simon & Schuster Australia

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## B Other matters

As noted in chapter 7, participants raised a variety of matters that the Commission considers are not directly relevant to the key issues in this study. Some related to the books sector more generally, while others were put forward as reasons for retaining the Parallel Import Restrictions (PIRs). This appendix elaborates on these other matters, although the Commission has not made any recommendations in relation to them.

### **The definition of a book for copyright purposes**

The *Copyright Act 1968* does not define a ‘book’ — for a literary work to be protected by copyright, it must be reduced to a ‘material form’. However, for the purposes of Australia’s PIRs (and the exemptions offered under sections 44A and 112A), the Act does define what a book is not. Specifically, the 30 day release rule and 7/90 day resupply rule do not apply to a book whose main content is a musical work, a manual sold with computer software for use with that software, or a periodical publication (such as a magazine).

One participant, Zephyr Music, commented on the effect of excluding a book ‘whose main content is one or more musical works’ from the current PIR exceptions. Amongst other things, Zephyr Music noted that:

Books containing musical works share little in common with software manuals and periodicals. It is hard to imagine what elements these three categories do share in common that would justify excluding all three from the operation of Sections 44A and 112A of the Act. If anything, books containing musical works should more logically be grouped with books containing literary works. Musical and literary works both come within the definition of ‘works’ under Section 10 of the Act and the nature of copyright subsisting in them is substantially the same (Section 31). (sub. 64, p. 2)

Zephyr Music went on to state:

Any artificially drawn distinction between “books containing musical works” and books containing literary works” in the prosaic area of the commercial importation and distribution of legitimately published books, is not proper subject matter for copyright law in our view. (sub. 64, p. 2)

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The Commission acknowledges that the arguments put by Zephyr Music have some merit. However, as the allowance or otherwise of parallel importation differs across the categories of copyright material, there will inevitably be an element of arbitrariness where legislation seeks to establish boundaries concerning its scope or coverage.

Nothing in the terms of reference, or the discussion by the Council of Australian Governments in relation to this study, suggests that it was the government's intention for the Commission to revisit this existing delineation between 'books' for the purposes of the parallel importation laws, and other material deemed in the Act to not be a book.

## **Goods and Services Tax**

Many participants to the study observed that books sold in Australia are subject to the 10 per cent GST whereas books sourced on-line from overseas are not. Characteristic of these views, the Australian Publishers Association stated in its submission:

Now with the internet used by almost 80% of Australians, books printed around the world are available with a few mouse clicks, GST-free — an instant 9% discount to prices at an Australian bookseller. (sub. 244, p. 2)

Most of these participants went on to suggest that removing the GST on local books would be a better way of putting downward pressure on book prices than removing or weakening PIRs. Some further noted that neither the UK nor the US governments charged a consumption tax on books, and in the US, where a state charges a state-based sales tax, online retailers collect and remit payments to the relevant government.

Prior to the introduction of the GST in 2000, books were generally exempt from wholesale sales tax. By way of 'compensation' to the industry, the Australian government introduced the \$240 million Book Industry Assistance Plan (BIAP), which provided for:

- an educational textbook subsidy scheme
- funding for the Printing Industry Competitiveness Scheme
- the introduction of the Education Lending Rights (ELR) scheme
- funding for the ABS to collect annual data on the book industry
- a public literacy and reading program
- grants to schools to increase their stock of Australian books.

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Although the BIAP terminated in 2004, the ELR scheme and ‘Books Alive!’ reading campaign have continued.

The Commission notes that rather than compensation for the GST, several components of this plan were more in the nature of supporting the broader community benefits attaching to improved access to books and higher readership levels. Further, the ELR scheme can be seen as an appropriate way of compensating authors and publishers for forgone sales where their works are held in education libraries.

The Commission recognises that the current GST arrangements do put local booksellers at some disadvantage compared with online foreign retailers. However, tax policy settings involve a range of considerations. Exemptions for particular sectors from generally applicable taxes have well documented efficiency costs which must be set against any benefits. Also, a removal of a tax in one area means that taxes must be raised elsewhere in the economy, or expenditure reduced.

These issues go well beyond the scope of this study.

### **Tariffs on imported paper products**

A further impediment to the competitiveness of Australian book production, identified by the Printing Industries Association of Australia, is the current tariff on imported paper. The Association submitted:

Another important cost faced by Australian book printers involves the 5 per cent tariff that is imposed on high quality paper grades imported to Australia. In contrast a printed book can be imported to Australia duty free. (sub. 106, p. 12)

The Commission has previously examined the effects of such ‘nuisance’ tariffs in its *Review of Australia’s General Tariff Arrangements* (PC 2000). In that report it noted that while the 5 per cent tariff level involved relatively small costs to the community, tariffs continue to distort producer and consumer choices, and reduce the competitiveness of Australian producers. It recommended that general tariff rates be reduced to Free ‘sooner rather than later’.

In two subsequent reports where the issue of nuisance tariffs arose — the *Review of Automotive Assistance* (PC 2002) and *Review of TCF Assistance* (PC 2003a) — the Commission noted that nothing had changed to invalidate this earlier view. The observations and recommendations in the 2000 report are similarly relevant to the matters raised by the Printing Industries Association of Australia.

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## Access to books by the blind and vision impaired

As discussed in the body of this report, access to literary material is important to Australian society, as a way of disseminating news and information, and as a source of entertainment and leisure and as an embodiment of Australian culture. For those who are blind or have a vision impairment, access to this material in a form that they can meaningfully use is an additional challenge.

While the development of electronic technologies for the publication and dissemination of literary works has provided scope to increase timeliness and accessibility for the vision impaired, the Royal Society for the Blind (South Australia) argued that this potential has not been fully realised because of aspects of the current copyright arrangements. It stated:

For people who are blind or vision impaired this technology provides the ability for them to source reading materials at the same time as their sighted peers and enjoy a genuine equality of access. Unfortunately the current Australian and International Copyright arrangements negate this advance in technology. (sub. 90, p. 2)

The Society went on to recommend:

That copyright holders who choose not to create a commercially available and price competitive accessible version, at the same time as the “physical book”, of their reading materials in Australia, forfeit their right to withhold permission for organisations such as the RSB to produce an accessible version for use by its client group. (sub. 90, p. 3)

The Commission is sympathetic to these particular concerns and the need to ensure timely access to books for the vision impaired. However, this issue goes to the core of copyright rather than being related to the PIRs, which are the focus of this study. That is, it is about the adaptation right established by copyright and how that right is handled across borders.

Indeed, the treatment of electronic literary works, as far as parallel importation laws are concerned, is already more liberal than for hard copy works. Section 44E of the *Copyright Act 1968* allows the parallel importation of an electronic literary work, when embodied in a physical digital form (such as an e-book on a CD or DVD).

## Environmental effects of book production

Concern about Australia’s level of greenhouse gas emissions, and the interaction with the current PIRs, featured in many submissions to the study. Typifying submissions on this matter, McPherson Printing stated that, in respect of the possible repeal of PIRs:

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A further important consideration is the environmental impact of reducing the portion of books printed in Australia ... the additional carbon emissions generated by the much longer supply chain on offshore shipments is contrary to the nation's objectives in this area. (sub. 168, p. 3)

Specifically, participants argued that the abolition of PIRs would lead to an increase in offshore printing and a greater use of air and sea freight to bring books to Australia, resulting in an increase in greenhouse gas emissions.

However, in the Commission's view, greenhouse gas emissions associated with the production and consumption of books are not relevant to the future of the PIRs. The Australian Government is currently developing specific policies to price carbon emissions and encourage greenhouse gas abatement. Seeking to overlay direct carbon emission reduction policies with what amounts, in this context, to be a policy of reducing physical imports of books is likely to be at best redundant and possibly counterproductive. That is, it may be the case that in terms of securing a lower level of emissions, a reduction achieved by curtailing imports of books may be more costly for the community than reducing emissions in other ways. In making this point in a general way, the Australian Government's Carbon Pollution Reduction Scheme Green Paper said:

Australia has a strong interest in promoting broad-based, market responses to climate change because these allow abatement to happen where and when it is most cost effective, for example through improving overall energy efficiency ... In contrast, purely regulatory approaches often target the more obvious causes of climate change, leaving untapped more cost-effective forms of abatement. (Australian Government, 2009a)

The Commission further notes that an extension of the logic for curtailing imports of books to secure reductions in greenhouse gas emissions would seemingly require Australia to reduce its exports of books — at least insofar as it was concerned about the carbon footprint associated with the consumption of books in other countries.

## **Piracy**

Piracy in the books industry occurs when someone makes unauthorised copies or reproductions of a book. While some unauthorised copies are of an inferior standard (such as coloured books being photocopied in black and white, or being reproduced on poor quality paper), some pirated copies of books are of a very high standard.

The development of e-books has further increased the scope for piracy, as have reductions in the cost of high-quality digital imaging and printing equipment. However, piracy is generally acknowledged to be much less of an issue in the books industry than for commodities such as CDs, and although one participant — Lonely

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Planet Publications (sub. 69, p. 2) — said that it suffers considerable losses from piracy, those losses being mainly in regional Asian markets.

Some participants suggested that removal of the PIRs would increase the scope for piracy, as there would no longer be a single authorised publisher or distributor of a particular title in Australia, making it harder to control book supply chains. Michael Moynihan, CEO of HarperCollins and formerly of Random House India, emphasised that piracy is a particular problem in the context of the Indian market, and that any increase in parallel importation of books from India could include an increase in pirated works entering Australia.

What would be to stop pirates identifying Australia as a significant market and shipping books in? If the editions were sophisticated enough (and they are) then it could be quite difficult to work out where they came from. Even if this were not to happen, uncertainty in territorial rights and the subsequent reduction in multinational investment and commitment to the Australian market can easily lead to a situation as in India where the options to the consumer are undermined. (Random House India, sub. 87, p. 4)

While PIRs might conceivably make it easier to identify pirated imports after the event, some of the previous reviews have rightly observed that they do not directly target the problem. Hence, were there to be evidence of increased piracy in the books market in the future, whether PIRs were in place or not, the Commission considers that better enforcement of the core copyright protections would be the appropriate response.

### **Promoting higher literacy rates**

Some participants, including the Coalition for Cheaper Books (sub. 218, p. 5), contended that the goal of increasing literacy levels is an important consideration to the future of PIRs. Specifically, they argued that cheaper books consequent upon the removal of PIRs would encourage reading and build literacy skills.

As the Commission noted in its discussion draft, it is not in dispute that further increases in Australia's already high literacy rate would have economic and social benefits. That is why there are various government programs in place directed at this end. However, in the Commission's view, the reductions in book prices in the market that would be likely to ensue were PIRs removed would do little to raise the literacy rate.

In response to the discussion draft, some participants commented that PIRs facilitate access to Australian-authored works, written in Australian idiom, and that this can have a positive impact on literacy quite separate from any impact it may have on the price of books. This was thought particularly important in the area of children's books:

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But can good, strong Aussie content improve literacy? Surely! If a kid can read about a story set in a place they know, with familiar names, humour they appreciate, events that make sense to them, and spelling and grammar that is line with what they learn at school, their reading experience is so much more likely to be positive. THIS IS WHY we need to make sure that our kids get good Aussie books to read! (Kim Rackham sub. DR414, p. 2)

Such impacts were considered in chapter 6, as part of the discussion of the broader cultural and educational benefits that books may have. As noted there, PIRs are unlikely to be an efficient and effective mechanism for addressing problems emanating from insufficient demand for Australian childrens' books.

### **The policy stance on PIRs in other countries**

Many participants argued that it would be not be sensible for Australia to remove PIRs while other countries continue to maintain similar restrictions. Typifying these views, Nick Earls contended:

If we were to open our markets to [the US and the UK], they would not open theirs to us. A move to allow parallel imports into Australia would be a move to make the playing field much less level. We would face being swamped by these two giant industries with their great economies of scale, and they would offer us nothing in return. (sub. 17, p. 5)

Even more forcefully, Scribe Publications said:

... in the United States and the United Kingdom — the bastions of free trade — parallel imports are prohibited. .... To surrender territorial copyright would be the publishing equivalent of abrogating sovereignty. (sub. 122, p. 8)

Several participants reiterated such views following the discussion draft.

The argument that Australia should not subject its authors and publishers to the competitive pressures of freer trade while other countries maintain restrictions has some superficial appeal. Indeed, the argument has been raised by many other industries facing the prospect of reductions in tariffs and other forms of border protection.

Yet as a basis for setting policies in Australia, the argument is by itself of little relevance. For good reason, Australia's trade policy settings over the last quarter of a century have been determined on a unilateral basis, dictated by what is in the national interest. This has typically entailed reductions in Australia's tariffs and border protection measures, even where foreign countries have retained their own such measures. This approach has been based on the recognition that shielding any particular local industry from international competition, whatever the protective

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arrangements that apply in overseas markets, typically comes at a greater cost to the domestic economy overall.

In the Commission's view, the arguments underpinning that unilateral approach should apply similarly in this instance. Importantly, the approach does not restrict the policy calculus to 'narrow' economic outcomes and thereby preclude consideration of the cultural implications of changes in the size and nature of the books industry that might result from modifications to the PIRs. Rather, it focuses attention on the various benefits and costs *for Australia* of alternative policy settings, instead of simply presuming that because some other countries restrict parallel imports of books, so too should Australia.

### **Macroeconomic objectives and regional support**

Some participants argued that PIRs are necessary to support exports and maintain employment, including in regional areas, particularly in the current economic climate:

[The Commission's recommendations] could also significantly diminish Australia's export income ... Sales of foreign rights to Australian books have enjoyed double digit growth for more than a decade and are now a significant export earner ... (Ian Irvine, sub. DR342, p. 2)

This will result in a loss of jobs in the publishing, printing, writing and illustrating industries, which could mean we end up paying more for our books not less due to the lack of competition. Sending jobs off shore is not desirable and hardly makes sense considering our economic downturn. (Angela Sunde, sub. DR406, p. 1)

[A] change to the 30-day rule would adversely affect several regional economies, such as Maryborough's, and regional employment. At a time of general economic slowdown, the impact of a change would be even greater. (Steve Gibbons MP, Joe Helper and Chris Meddows-Taylor, sub. DR554, p. 3)

The Commission acknowledges that the PIRs have increased employment, output and net exports in the books production industry, although equally, by dampening consumer spending power and holding resources, they are likely to have reduced employment, output and net exports in other parts of the economy. However, as the Commission has discussed elsewhere (PC 2008, chapter 6), industry assistance policies are not appropriate tools for addressing macroeconomic objectives.

Likewise, the Commission recognises the regional significance of parts of the books industry. In particular, absent PIRs, printing activity and employment in two regions are likely to be affected (see chapter 5). But it is not the role of PIRs to operate as a regional development/support mechanism. Any public support of this nature should

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be provided explicitly and transparently, rather than by a private, implicit, tax on book consumers.

## **Distributional considerations**

Some participants argued against any change to PIRs on the basis that incomes of authors would be likely to diminish under an altered regime and many authors do not make substantial amounts from their writing to start with.

Many writers and illustrators pursue their work with little remuneration. Few can make writing/illustrating their full time career. The surrendering of Australian copyright will only make it harder for them to continue in the industry ... (Amanda Graham, sub. 253, p. 1)

... this is the most astonishing and scandalous thing about this report: the fact that writers, the keepers of our stories, can be treated with such scant respect. Replace the word ‘authors’ in the phrase ‘authors would generally face reductions in their income’ with ‘doctors’ or ‘teachers’ or ‘public servants’ or ‘politicians’ and imagine the very idea that we would propose to *reduce* the incomes of these professionals or their ability to pursue a career. (Text Publishing, sub. DR442, p. 2–3)

On the other hand, according to a (self-described) ‘failed and failing’ author:

... there’s no *entitlement* to a writing or publishing ‘career’. There’s not even such an entitlement to a *living wage*. ... The urge [to pursue a career in the world of books] may be vocation or ambition or both, but either way it’s a workaday and working lifetime indulgence. As such competition is fierce, most of us will fail, and for the few, success should be seen as a blessing and a privilege. (Jack Robertson, sub. DR432, p. 22)

As noted in chapter 1, the Commission is required to make recommendations in the interests of the community as a whole, taking into account the benefits and costs of reform options to all affected parties. Accordingly, the Commission has previously made many reform recommendations that were likely to reduce the incomes of people working in particular sectors of the economy and potentially reduce employment in those sectors, where its analyses indicated that reforms would generate net benefits for Australia overall. And Australian governments have implemented many reforms, including reductions in import protection, industry assistance and restrictions on competition, on that basis. (The local book industry itself is likely to have benefitted from many of those reforms, through lower input costs and higher consumer demand.)

In assessing the merits of the PIRs in this study, the Commission has given no less or more weight to the interests of authors or others working in the book industry than it gives to Australians in any other sector. In doing so, it has focussed on the net benefits of the PIRs and their reform to Australians in aggregate, recognising that, beyond adjustment cost issues, any distributional concerns are more

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appropriately dealt with through such mechanisms as the progressive taxation and social security systems that apply equally to Australians of any vocation.

That said, where an industry or activity generates externalities (as the book industry does through its contribution to Australian culture), there may be a case — on the basis of those externalities — for ongoing public support, in one form or another, for that industry or activity. In this context, the Commission has recommended a review of the totality of financial assistance for Australian writing and publishing (chapter 7). Such support is likely to also increase the returns of people who enter and work in the industry or activity. However, these distributional changes are incidental to the rationale for such industry assistance, and it remains for individuals to determine whether the potential monetary and other rewards from pursuing work and business opportunities within any particular industry or activity warrant the effort and risks entailed.

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## C Reform case studies

The Parallel Import Restrictions (PIRs) on CDs in Australia and books in New Zealand were lifted in 1998. The Commission has explored these reform episodes to see what lessons they may provide for the assessment of the merits of the PIRs on books in Australia, and of options for their reform.

While there are obvious parallels between CDs and books as consumer items, and between Australia and New Zealand as markets, a number of considerations limit the scope and strength of the lessons that can be drawn. These considerations are discussed in the following sections.

### C.1 CDs in Australia

#### Background

There have traditionally been similarities between the books and sound recording industries. Sound recordings in a physical form, like books, are generally mass produced consumer goods, with their production characterised by high fixed costs (the cost of developing the original work) and low variable costs (the costs of producing an extra copy of the CD or book). The music industry's marketing chain is also broadly similar to that of the book industry. In general, physical music products are:

- created by many artists in a wide range of genres and styles
- refined, produced and marketed by a few large record companies and many small ones, with a variety of ownership structures
- distributed through a variety of independent retailers, discount and department stores and chain record shops.

There are also some important differences. For example, more importance is placed in the music industry than the books industry on the live performance and broadcast of creative works, both as a means of promoting the creators and of earning revenue. Further, a high proportion of music sales today, particularly of individual tracks or 'singles', occur through digital channels. And compared to books, musical

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recordings are potentially more amenable to piracy — whether through the duplication of CDs or through personal digital file sharing via the internet.

It should also be noted that, prior to 1998, the PIRs on CDs in Australia were more restrictive than for books. Sound recordings were not subject to the 30/90 day rules, as books have been since 1991.

The Australian Government abolished parallel importation restrictions on sound recordings in July 1998, in part because of research that suggested the then relatively high prices for recorded music in Australia reflected an ability of record companies to use their market power to exploit local demand conditions (PSA 1990). In particular, the Prices Surveillance Authority (PSA) found that Australian consumers were paying substantially higher prices for these goods than overseas consumers.

## Impacts on prices

There is evidence that consumers benefitted from lower CD prices as a result of the lifting of PIRs on sound recordings. In monitoring the impact of the policy change, the Australian Competition and Consumer Commission (ACCC) observed:

... a gradual rise in competition from lower priced parallel imports. This appeared to result in lower prices of both imported and locally made compact discs. The ACCC also noted the entry of non-traditional suppliers of CDs supplying low-priced imports to Australian consumers. In its 2001 report the ACCC noted a downward trend since August 1998 in the average prices of CDs available at specialist music stores. (ACCC, sub. 260, p. 18)

More specifically, the ACCC found that the average (tax-adjusted) price of top 40 CDs at specialist music stores immediately fell by around eight per cent (Fels 2002).

Gauging the ongoing price effects from the removal of the PIRs is complicated by a number of factors. Among other things, the growth in digital music distribution over the last decade is likely to have contributed to some of the observed low pricing during this period — accordingly, some price reductions for CDs might have occurred regardless of the earlier changes to the PIRs. Also, some participants told a 2001 Senate Committee *Inquiry into the Provisions of the Copyright Amendment (Parallel Importation) Bill* (SLCLC 2001) that the extent and breadth of the price reduction appeared somewhat limited. Indeed, the Full Federal Court<sup>1</sup> later found that both Universal Music Australia and Warner Music Australia had engaged in exclusive dealing in order to reduce competition (thus dampening the price benefits expected to flow from the removal of the restrictions), in breach of section 47 of the

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<sup>1</sup> *Universal Music & Ors v Australian Competition and Consumer Commission* [2003] FCAFC 193.

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*Trade Practices Act 1974*. As a result, it is possible that the potential price benefits to consumers of removing the PIRs were not fully realised, at least for a period following the removal of the restrictions.

Nevertheless, as the Australian Publishers Association acknowledged in its submission, ‘since the deregulation of territorial copyright for sound, there has certainly been some reduction in price’ (sub. 244, p. 56). The Association also noted that, in some cases, the downward price pressure following the removal of the PIRs is not dependent on parallel importation actually occurring:

It is the experience of the Australian music industry that there is limited genuine importation of CDs except by the rights holder, particularly in the case of non-top-20 discs. Instead, the changes to the law are used by large-volume retailers as a threat to music publishers, along the lines of: ‘drop the price or we’ll buy offshore’. (sub. 244, p. 58).

Quantitative analysis drawing on data for a range of countries (Chen and Png 2004), also cited by the Association, indicates that the scope to parallel import CDs is typically associated with a reduction of between 7 and 8 per cent in the retail price of music CDs.

### **Impacts on new Australian music**

At the time of the debate on removing PIRs from sound recordings, music publishers argued that the restrictions were necessary to enable investment in local musical talent.

However, as the Network Economics Consulting Group (NECG) subsequently argued, sound recordings may have been potentially less sensitive to parallel importation than books because:

- it is more difficult to parallel import works of local acts which are not widely distributed in countries from which parallel imports of CDs are likely to be sourced (for example, South East Asia)
- the subsequent growth of non-traditional channels for distributing music recordings (following the lifting of PIRs), such as supermarkets and discount stores, may have contributed to the growth of investment in local acts (NECG 2004, p. 27).

Drawing on ‘observations from within the music industry’, the Australian Publishers Association (sub. 244, p. 59) argued that there has been a decline in the Australian music industry as a result of the removal of the PIRs in 1998, with a reduction in employment across the industry of 30–40 per cent in the past decade, fewer bands getting recording deals, and a ‘radical’ reduction in investment in

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individual albums. The Association argued that the absence of PIR protection discouraged investment by the local music industry in part due to the risks of free riding by foreign competitors.

As with the reduction in CD prices, other changes affecting the industry in the past decade would make it difficult to isolate the specific impacts of the removal of PIRs in these respects. For example, on the one hand, the growth of digital downloading and file sharing is likely to have had a dampening effect on investment in parts of the music industry. On the other hand, adjustment pressures in the music industry are likely to have been cushioned by the strengthening, in 2000, of the Australian Music Code of Practice (under the *Broadcasting Service Act 1992*). This code aims to increase local Australian music content on commercial radio, in essence providing a certain guaranteed demand (and royalty stream) for newly released Australia music.

Whatever the specific impact of these various factors, evidence suggests that local Australian music continues to enjoy a significant share of the local market, without PIR protection. Six years after the ban was lifted, record numbers of local acts occupied the number one position in the Australia Recording Industry Association charts (NECG 2004). And in the year 2006-07, approximately 17 per cent of all commercially released all tracks were recorded by Australian artists (AMPCOM 2007).<sup>2</sup>

## C.2 Books in New Zealand

### Background

For many years, New Zealand, like Australia, imposed a blanket ban on the parallel importation of ‘creative-industries’ goods (such as books, films, music, and more recently DVDs and software) under the *Copyright Act (New Zealand) 1913*. The ban was removed in May 1998. Apart from the reintroduction of a partial ban on the parallel importation of some films, New Zealand’s creative industries continue to operate under an open market regime.

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<sup>2</sup> In a submission following the discussion draft, the Institute of Public Affairs (sub. DR555, p. 11) noted that while CD prices had fallen since the removal of PIR protection, the number of music industry royalty recipients, and the amount they received, had increased every year since 2002. However, royalties collected by APRA and the Australasian Mechanical Copyright Owners Society are for the public performance and mechanical use of musical works, respectively. While the growth in these royalty payments may represent a recent strength in the Australian music industry, no real corollary for this revenue stream exists in the books industry.

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The rationale for lifting the ban on the parallel importation of books was to realise welfare gains for the New Zealand economy by promoting a more open and competitive environment (MED 2007). This decision was underpinned, in part, by a New Zealand Institute of Economic Research (NZIER 1998) analysis. At that time (and, indeed, during this study), book producers raised concerns about the lifting of the ban on parallel imports on New Zealand's book industry (box C.1). However, the NZIER concluded that, although lifting the ban would most likely distribute gains and losses unevenly among stakeholders, the benefits to final consumers, as well as producers using copyright materials as intermediate inputs, would, on balance, outweigh other considerations.

**Box C.1 Book producers' concerns regarding the impact of lifting PIRs on New Zealand's book industry**

New Zealand's book industry raised concerns, both before and after the PIRs applying in that market were lifted, that are similar to those that have been raised in this study. For example, New Zealand publishers around the time the ban was lifted claimed that:

... the investment in publishing local works by the agents of the international publishers would fall dramatically if the parallel importing restrictions were lifted. (NZIER 1998, p. 42)

Some participants in this study have likewise argued the New Zealand book industry has been damaged by moving to an open market:

It is clear that lifting of the ban on parallel importing in New Zealand has had a detrimental effect on publishers and authors. Certain categories, particularly children's and tertiary education have been particularly impacted. (Book Publishers Association of New Zealand, sub. 166, p. 3)

The New Zealand industry today is characterised by little market growth and reduced investment in publishing infrastructure and local authors, particularly unknown and lesser known authors. (Allen & Unwin, sub. 214, p. 7)

Notwithstanding the similarities between the two markets, New Zealand's size and proximity to Australia are likely to confound the extent to which parallels can be drawn between the effects of reforms to its PIRs and what might happen were Australia's PIRs to be reformed. Walker Books Australia (sub. 256) noted that, with a population of under four million, New Zealand is a much smaller market and is more expensive to support. Further, territorial 'rights' to New Zealand sometimes continue to be bought and sold as part of 'ANZ rights', and in many (though not all) respects the market continues to operate as it did prior to the lifting of the PIRs. Peter Donoughue (sub. 8, p. 5) argued that New Zealand can be 'profoundly misleading' as an example of how other 'open markets' might operate. The Australian Publishers Association (sub. 244, p. 52) also commented on some of the difficulties of transferring the New Zealand book industry reform experience across the Tasman.

With these caveats in mind, the following sections explore the effects of the 1998 reforms in New Zealand.

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## Impacts

Over the past decade, the New Zealand Government has commissioned a number of reviews aimed at monitoring the impacts on the books industry resulting from lifting the ban on parallel importation (NZIER 2000; NECG 2004; LECG 2007). In each instance, the reviewing agency consulted extensively with key stakeholder groups within the New Zealand books industry. The outcomes of these reviews have revealed few deleterious effects on the local books industry (box C.2).

### Box C.2 Findings from reviews of the New Zealand book reforms

‘Opponents to the law change predicted a flood of cheap imports, and warned of trade sanctions. Neither has materialised, and the effect of introducing parallel importing, to date, appears muted. However, although tangible impacts on volumes and prices have been small, the possibility of parallel importing has exerted pressure on the market place ... Delivery speed has improved, with customer orders able to be filled in a matter of days instead of weeks or months. Access to a full range of titles is possible, with availability enhanced by electronic links with suppliers around the world.’ (NZIER 2000, p. 269)

‘... there was no evidence of any substantial detriment to the financial performance or investment activity ... income earned by publishers has risen substantially from 1998 to the present while export growth in this sector since liberalisation has exceeded overall export growth.’ (NECG 2004, p. 6)

‘NECG’s assessments of various indicators suggest that there are no adverse impacts on investment in this industry from the liberalisation of parallel importing. Many publishers that were interviewed noted that insofar as there were any major impacts from parallel importing, they arose from the greater availability of remainders.’ (NECG 2004, p. 37)

‘There is agreement among industry that book sellers will generally stock books from New Zealand publishers if they have the titles in stock. Commercial parallel importation is predominantly of niche titles and the bulk purchase of discounted backlist titles (especially bestsellers from the United States).’ (LECG 2007, p. 17)

‘... the bulk purchase via parallel importation of backorder titles (and end of line remaindered books) has allowed book sellers to provide books to consumers at prices that they would not otherwise have been able to. Book sellers do not see this discount selling affecting their sales of new release titles and full price books, and believe that parallel importing has allowed them to service a new market for books (at lower price points).’ (LECG 2007, p. 19)

‘The book industry in New Zealand appears to be growing with no major detrimental impacts as a result of parallel importing ... in the last ten years the number of children’s titles published has trebled with significant export growth in these products.’ (MED 2008)

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### *Impacts on consumers*

After a year and a half of the open market regime, the NZIER (2000) concluded that the tangible impacts on prices had been small. It cited a number of reasons for this including that a low New Zealand dollar had effectively reduced any incentive to parallel import.

However, the NZIER (2000) observed that the lifting of the ban had made the book market more contestable because, although retailers preferred to source through their local wholesalers, they would, in some cases, explore other channels to improve timeliness of supply. It went on to conclude that, as a result, the quality of retail services available to New Zealand consumers had been enhanced, including:

- improved speed in filling customer orders
- improved availability and access
- earlier release of new titles. (NZIER 2000, p. 282)

It should be noted, however, that significant benefits of this nature have already been realised in Australia through the 1991 reforms.

In 2007, the LECG found that greater parallel importing was occurring, predominantly in relation to niche titles and the bulk purchase of discounted backlist titles (especially bestsellers from the United States). It found that while the prices of new release titles had increased over the preceding years, due to higher fuel and transportation costs, parallel importing had ‘allowed book sellers to provide books to consumers at prices that they would not otherwise have been able to’ (LECG 2007, p. 19).

Following the release of the Commission’s discussion draft, the Australian Publisher’s Association submitted a study on the impact that abolition of PIRs had on the New Zealand book industry (sub. DR513, att. 1). In that study, Castalia Strategic Advisors found that the measured price margin between NZ and US titles was narrower in 2009 than in NZIER’s previous study. Castalia noted that the results it found were ‘highly dependent’ on the prevailing exchange rate at the time of the comparisons, and argued that the measured differences were ‘within the margin of error’ (sub. DR513, att. 1, p. i).

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## *Impacts on industry*

The impact on local publishing appears to have been much less than many predicted at the time of the reforms. As HarperCollins noted during the course of the 2004 NECG study:

The only real impact has been on the availability of overseas remainders and whilst these can be a distraction there is no evidence in my view that they have an overall positive or negative effect on the market, with the exception of children's books. Regular monitoring of the New Zealand bestseller lists will confirm that almost without exception the titles which appear on such lists are being supplied through traditional rights channels. (HarperCollins, as quoted in NECG 2004, p. 37)

A weak New Zealand exchange rate, in the years following liberalisation, no doubt played a role in this, by making parallel imports less price competitive. Another factor is the range of services provided by local publishers. For example, REDgroup Retail noted that many bookstores ordered from local rather than international publishers because:

Local suppliers offer a range of useful benefits and services for booksellers, including sale or return terms of trade, rebates, free into store delivery, author tours and marketing support ... (sub. 175, p. 4)

In recent years, the revenue share of imported titles (as distinct from New Zealand published titles) has generally increased across the publishing sector. A survey of 34 publishers in 2008 indicated that their revenue share from imported titles had increased from 39 per cent to 62 per cent between 2005 and 2008 (Colmar Brunton 2008). The strengthening New Zealand dollar over this period is likely to have been a significant factor in this shift, although abolition of the PIRs is also likely to have had some effect.

Nevertheless, the 2009 Castalia paper found that the number of titles published in New Zealand, rather than declining following the abolition of the PIRs, actually grew between 1998 and 2008, albeit on one measure<sup>3</sup> by less than 1 per cent annually (Australian Publisher's Association, sub. DR513, att. 1, p. 9).

Although there have been some significant changes in the nature of the New Zealand book industry (such as a shift from New Zealand to Australia of investment

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<sup>3</sup> Castalia interviewed senior managers of the five largest publishers in New Zealand, which represent 90 per cent of New Zealand's domestic publications. Castalia argued that the data obtained is therefore representative for the whole industry. However, the growth figure excludes changes in 'subsidised' and 'export-oriented educational titles'. In relation to the latter, Castalia noted that a number of New Zealand companies have been successful in providing English language and literacy services internationally, and the publishing industry 'has supported that growth with appropriate titles'. Castalia justified the exclusion of these titles on the basis they are not sold in New Zealand and enjoy PIR protection in other markets.

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in warehousing and distribution), publishers and booksellers acknowledged that these may have arisen in any case:

... the Book Publishers Association does not attribute this rationalisation solely to the effects of parallel importation, although they feel the uncertainty introduced by the potential threat of parallel importing is likely to have been an influence on decisions.

[Booksellers] also see the move to Australia as part of a global trend of distribution chain rationalisation (to reduce costs), rather than being directly related to the effects of parallel importing. (LECG 2007, pp. 17, 19)

Booksellers in New Zealand also believe that lifting the ban on parallel imports has improved service, title range and availability (LECG 2007; MED 2008). In their opinion, the opportunity to parallel import has allowed them to target a new consumer market that would have otherwise turned to online purchasing channels. (Indeed, according to LECG (2007, p. 18), the main issue currently facing New Zealand booksellers is competition from online buying direct from foreign publishers.)

### *Impacts on New Zealand authorship*

There is a range of views regarding the nature and extent of the impacts on New Zealand authorship and culture arising from the abolition of PIRs.

Submissions from some booksellers indicated that demand for locally authored books had not been affected by the reforms:

Bookstore customers do seek books, fiction and non-fiction, which relate to the country they live in. Our experience in New Zealand pre and post the introduction of an 'open market' for parallel imports is that this local reader demand for New Zealand books has not altered in any significant way. (REDgroup Retail, sub. 175, p. 2)

However, the Managing Director of Hachette New Zealand, Kevin Chapman, recently described New Zealand's adoption of an open market as being "like a cancer, an insidious thing" that had worked against protection of the country's culture' (BPANZ 2008). One concern expressed by New Zealand publishers in this respect is that parallel imports may have constrained growth in the promotion of local titles. Hence, while noting that the actual level of publishing and promotion of New Zealand titles seemed not to have been affected by the advent of parallel importation, LECG reported that:

... book publishers believe that the level of promotion may have been greater if they were able to increase their margins (without the threat of parallel importing). (2007, p. 19)

Further, a participant in the current study contended that:

... since parallel importation has been approved, many publishers have ceased to exist and few people would be able to list more than 5 New Zealand children's book authors

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simply because there are now so few opportunities for publication in their country. (Peter Taylor, sub. 247, p. 1)

And according to the Castalia paper, in contrast to the overall growth in domestic titles published in the ten years to 2008, the number of New Zealand children's titles published decreased 'very significantly'. (Australian Publisher's Association, sub. DR513, att. 1, p. 9).

On the other hand, New Zealand Trade and Enterprise, the New Zealand Government's economic development agency, recently noted the nation's continued strengths in producing locally authored works, including some with significant cultural content:

Publishing is a significant creative industry in New Zealand, with strengths in fiction, poetry, art, New Zealand history and biography, and a growing range of titles by and about Maori.

New Zealand authors have garnered international recognition, including fiction writers Lloyd Jones (Booker-shortlisted *Mr Pip*), Witi Ihimaera (*The Whale Rider*) and Keri Hulme (Booker prizewinner *The Bone People*). The domestic and international success of Ian Brodie's non-fiction *Lord of the Rings Location Guide* is a good example of the publishing and tourism industries leveraging off each other.

Children's writing is another major strength, with Margaret Mahy, Lynley Dodd (creator of the ever-popular *Hairy Maclary* series), Joy Cowley, VM Jones and Sherryl Jordan all successful internationally. (New Zealand Trade and Enterprise 2008)

The MED (2008) paper indicated that the number of children's titles published over the previous decade had trebled with a significant growth in exports. And census data indicates a large increase in the number of people whose main job is that of an author or critic over the past three New Zealand censuses, from 1170 in 1996 to 1689 in 2006 (MCH 2009, p. 8).

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## D Price comparison methodologies

In assessing the effects of Parallel Import Restrictions (PIRs) on prices in chapter 4, the Commission drew on a range of comparisons of the prices of current list trade books in Australia and in the United Kingdom (UK) and United States (US). They comprised:

- PSA/ACCC surveys, for the period 1989 to 2001
- Commission comparisons, for the financial years 2007-08 and 2008-09
- study participants' comparisons, for particular points during 2008-09.

While the methodologies employed had commonalities, they also differed in some important respects, as did the results obtained (box D.1).

This appendix discusses some methodological and interpretation issues that arise in relation to those price comparisons, and details the methodology used in the Commission's comparisons.

### D.1 Methodological approaches and issues

Most price comparisons follow a broadly similar methodology: matching a selection of titles across countries (sometimes controlling for the particular edition); and then using some measure of price and/or cost to estimate the price difference. Within these broad parameters, studies can vary in a range of ways that have implications for the interpretation of their results. Some important considerations are:

- the titles sampled
- how retail prices are measured
- whether and how the format of compared editions is allowed to vary
- the time period to which a comparison applies.

This section discusses these considerations with reference to the approaches taken in the price comparisons drawn on in this report.

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## Box D.1 **Price comparisons for trade titles in Australia, the UK and the US**

### **PSA/ACCC surveys**

Between 1989 and 2001, the Australian Competition and Consumer Commission (ACCC) and, before it, the Prices Surveillance Authority (PSA) conducted several surveys comparing the prices of titles in Australia to those of overseas editions.

The methodologies employed in each of these surveys are summarised in the ACCC's submission to this study (sub. 260).

Based on the collective results of these studies, the ACCC concluded that Australian consumers had generally paid more for books than their counterparts in the UK and the US for most of the period covered by its surveys. (The results for the ACCC's time series of price differentials for bestselling paperback fiction books are illustrated in the figure in box D.2).

### **The Commission's comparisons**

The Commission conducted comparisons drawing on the extensive Nielsen BookScan databases for top 5000 sales in Australia, the UK and the US during 2007-08 and 2008-09.

The methodology used and results obtained were outlined in section 4.2, and are explained in more detail in section D.2 of this appendix.

In summary, the results suggest that, in 2007-08, when the Australian dollar was relatively strong, Australian consumers paid somewhat more for better selling trade titles than UK consumers and markedly more than US consumers. The estimated price-gap between Australia and the US was much narrower in 2008-09, whereas the price-gap between Australian and the UK was marginally wider.

### **Participants' comparisons**

Several participants in this study, particularly booksellers and publishers, presented their own price comparisons. These typically involved comparisons of a handful of bestselling titles and were undertaken using prices (and exchange rates) in late 2008 or early 2009, after the large devaluation in the Australian dollar against the US dollar in the second half of 2008 (see figure D.1).

Some common aspects of the methodologies used were discussed in section 4.2. As foreshadowed there, this appendix outlines the methodologies and results of a number of the individual comparisons submitted by participants (see table D.3 at the end of this appendix).

Taken at face value, the results together suggest that prices of some titles in Australia can be competitive with, or lower than, the price of UK or US editions. At the same time, the comparisons suggest that there are also some titles available at a lower price in the UK and US.

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## **Samples**

Many price comparison studies for trade books, including those undertaken by the ACCC/PSA and by participants, have compared the price of a limited number (often less than a dozen, though up to 42 in one of the ACCC surveys) of bestselling titles in Australia to the UK and US price (with some publishers and booksellers basing their comparisons for this study on a selection of their own bestsellers).

For its comparisons, the Commission has been able to draw on the extensive data on trade titles contained in The Nielsen Company's BookScan database — which was not available at the time of the PSA/ACCC surveys — with a focus on 'top 5000' editions (in sales terms) in the different countries. Its 'like-with-like' price comparisons include over 900 matches between Australian and UK editions and more than 300 matches between Australian and US editions. Its 'lowest cost' comparisons entail well over 1000 matches in relation to both the UK and US (section D.2).

An advantage of a focus on better selling books is that they account for a large segment of total retail sales of books. Indeed, the top 500 editions sold in Australia in 2007-08 accounted for one quarter of the value of all trade sales, while the top 5000 editions accounted for over half of the value (55 per cent in 2007-08). Equally, a focus on bestselling or better selling trade titles may mean that the resulting sample is not representative of the trade sector as a whole — in particular, it does not necessarily provide a good indication of average price differentials on back list titles.

Disadvantages of comparisons that use small sample sizes, particularly where the samples are not drawn randomly, are that they are more susceptible to selection bias and can provide less statistically robust results.

## **Price**

### *Recommended retail prices*

The recommended retail price (RRP) is set by the publisher around the date of publication. It is a readily available measure of price that forms the basis of price comparisons undertaken by the ACCC/PSA, many participants and the Commission.

A note of caution for the interpretation of RRP-based comparisons is that, to the extent that discounting practices vary across countries, they may give a misleading indication of actual retail price differentials. That said, the Coalition for Cheaper Books (sub. 218) contended that discounting practices are common in all markets

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and therefore the comparison of RRP in different countries is a reasonable methodological approach.

To help test this contention, the Commission estimated the level of discounting in Australia and the UK by comparing the RRP and average selling price (ASP) for each of the top 5000 trade sales captured in the Australian and UK Nielsen BookScan databases. While the Commission found some differences between the two markets<sup>1</sup>, the average level of discounting was similar — around 20 per cent off the RRP. Since ASP data was not available in the US Nielsen BookScan database, the same analysis could not be undertaken in relation to that market. Nor was data available to allow the Commission to control for the effects that the differences in the market shares of retail channels between the countries might have on ASPs (see below).

### *Average selling prices*

Several participants used the Australian ASP in their price comparisons (for example, Hachette Australia, sub. 232; and Allen & Unwin, sub. 214). The Commission also supplemented its RRP analyses with comparisons based on Australian and UK ASPs.

ASPs are likely to vary between retail channels within any country as the level of service and discounting varies. For example, discount department stores tend to focus on selling bestselling titles at a substantial discount to the RRP. Typically, little if any specialist in-store sales support is provided to book buyers. In contrast, independent book retailers typically provide a higher level of service but offer a lower level of discount from the RRP. In a sense, consumers who buy books through independent bookstores pay not just for the book but also for the additional service offered with it.

Price comparisons based on ASPs may therefore be affected if there are significant variations in the composition of the book retail sector across countries. In this regard, the market share held by independent book retailers in Australia is around double that held by independent retailers in the US (chapter 2). Therefore, any measured gap between Australian and US ASPs may partly reflect the cost of the higher overall level of service provided to Australian consumers through its relatively large number of independent bookstores. Similarly, independents have a smaller market share in the UK relative to Australia (Tim Winton, sub. 204). This could also affect Australia-UK comparisons based on ASPs.

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<sup>1</sup> The average discount that applied to the UK's top 50 trade sales was slightly higher than the average discount that applied to Australia's top 50 trade sales — 35 per cent in the UK compared to 30 per cent in Australia.

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### *Adjustments to prices*

A number of adjustments to overseas prices (RRPs and ASPs) are needed to estimate an ‘equivalent’ Australian price. In particular, prices need to be converted into a common currency and adjusted for differences in taxes.

Some participants added to the UK and US price an estimate of the cost of freight from the comparison country to Australia. Where adjustments for freight are made, several issues arise in determining an appropriate adjustment — particularly if the comparisons are to be used for assessing the effects of allowing parallel importation — as freight costs would be dependent on: where books are printed (which may be outside the UK/US); the number of books imported at any one time; and whether they are shipped by air or sea.

## **Timing**

### *Exchange rate fluctuations*

Changes in the value of the Australian dollar can markedly affect measured price differentials (see box D.2). Price comparisons undertaken at a point in time, by themselves, fail to reveal longer-term shifts and trends. As noted in chapter 4, it is the effects of PIRs over time that is of most relevance to future policy settings. The ACCC created a time series of price differentials, stretching to 12 years, for certain segments of the market (box D.2).

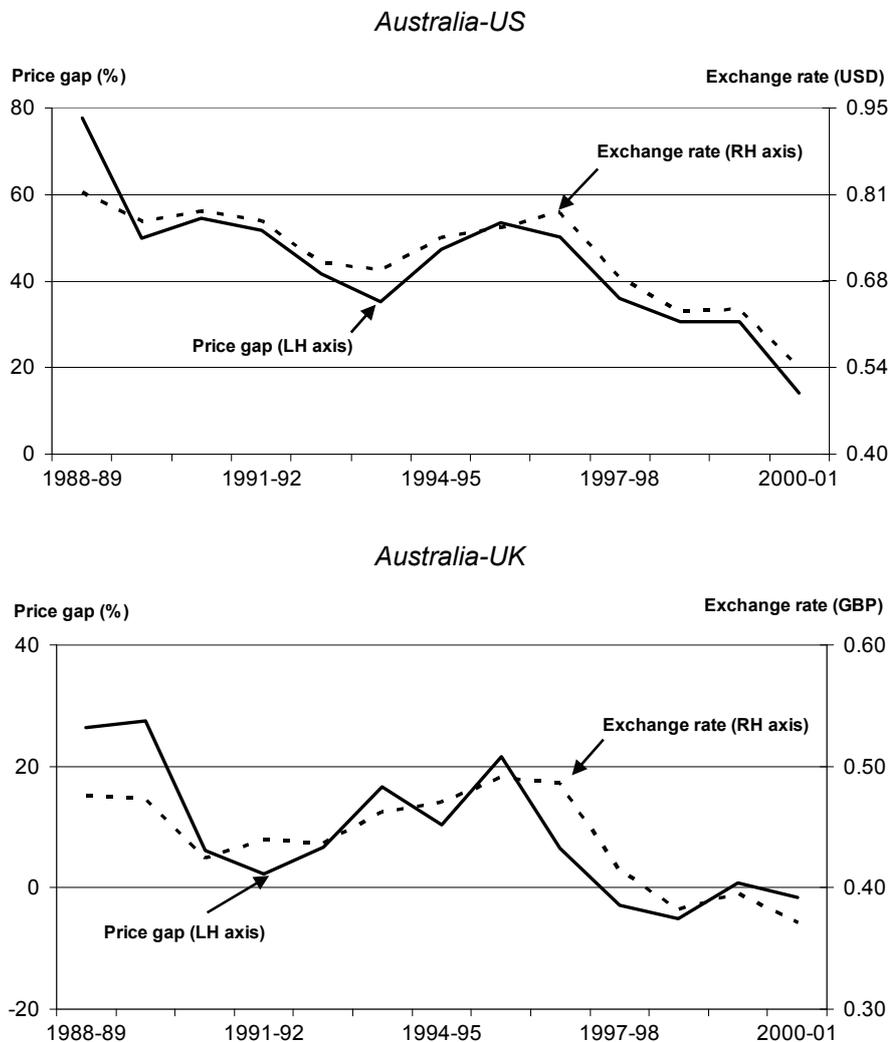
However, the Commission’s comparisons and those submitted by participants relate to specific time periods:

- The Commission’s analysis in the discussion draft was based on data only for 2007-08 — the latest financial year for which data was available. This was a period in which the Australian dollar was relatively strong, especially against the US dollar (figure D.1). The 2007-08 average Australian exchange rate was around US dollar (USD) 0.90 (17 per cent higher than the average between July 2003 and May 2009) and UK pound (GBP) 0.45 (6 per cent higher than the average between July 2003 and May 2009).
- The price comparisons submitted to the study by participants were generally undertaken for the period subsequent to the depreciation in the Australian dollar in the second half of 2008 (although, the Australian dollar recovered somewhat against the UK pound in late 2008 (figure D.1)). For instance, price comparisons by Leading Edge Books (sub. 254) were based on exchange rates in late 2008 — USD 0.69 and GBP 0.42. For comparisons with the US, Hachette Australia (sub. 232) used the 20 January 2009 exchange rate (USD 0.68).

## Box D.2 Price differentials and exchange rate movements

The Commission mapped the results of the ACCC's time series of price differentials (based on RRP's) for 'like' bestselling paperback fiction books (the unbroken lines in the figure below) against the annual average exchange rates (shown by dashed lines) over the period 1988-89 to 2000-01. The figure suggests a correlation between movements in estimated price differentials and exchange rates. Over the period, the price of books as measured by the PSA/ACCC tended to be higher in Australia than in the UK and US. However, the depreciation of the Australian dollar from the latter half of the 1990s contributed to a narrowing of these price gaps and, in the case of the Australia-UK gap, to a reversal of the direction in some years.

### Exchange rates and price gaps, bestselling paperback fiction 1988-89 to 2000-01



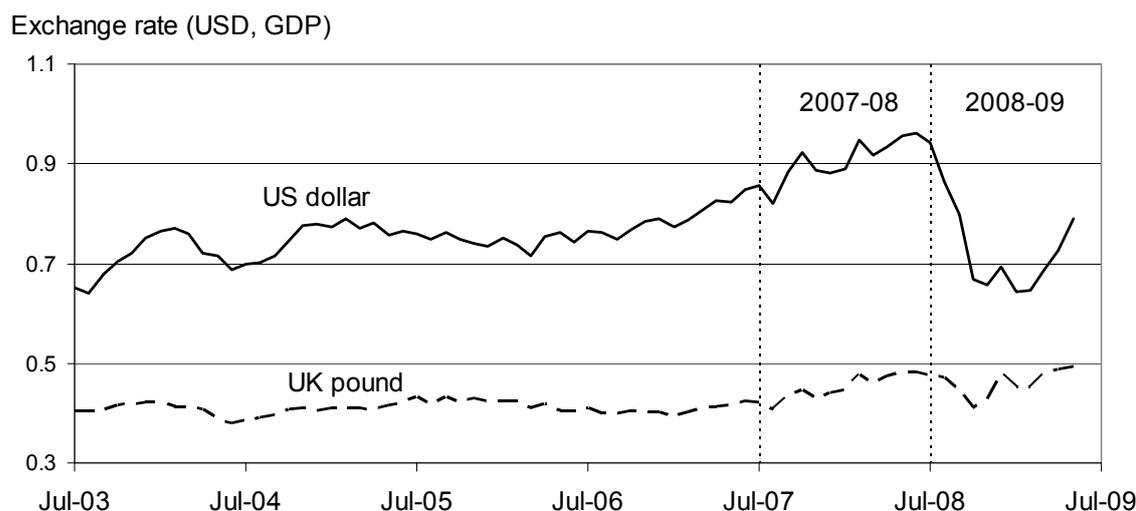
Exchange rates are the annual average for the financial year. Price differentials for 2000-01 are based on data for the six months to the end of December 2000.

Data sources: ACCC (2001) and RBA (2009).

- For this final report, the Commission has extended its price comparisons using BookScan data for (the first eleven months of) 2008-09. This period covers the time for which most participants undertook price comparisons. The average Australian exchange rate for the period was around USD 0.74 (5 per cent lower than the average between July 2003 and May 2009) and GBP 0.46 (9 per cent higher than the average between July 2003 and May 2009).

The potential for price gaps to change over time needs to be recognised when interpreting the results of comparisons, particularly when attempting to derive lessons from them in relation to the effects of PIRs. In this context, what matters in assessing whether PIRs have price impacts is not whether the average price of books is higher or lower in Australia compared to other markets, either at a point in time or over time, but rather whether there would be opportunities, from time to time, for the importation and sale of at least a subset of books at lower prices from abroad.

**Figure D.1 Australian dollar exchange rates, July 2003 to May 2009**



Data source: RBA (2009).

### *Seasonal differences*

Seasonal differences in sales patterns across countries may to some degree affect the results of comparisons undertaken during a particular month. For example, as Mother's day is not celebrated in the same month in Australia and the UK, price comparisons undertaken in May (when the demand, and actual selling prices, for books in Australia may be somewhat higher due to Mother's day) may not be representative of the underlying price differential. There could also be seasonal differences in demand for particular types of books between northern and southern

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hemisphere markets. Using a full year of sales data, and/or using RRP (which are unlikely to be very responsive to seasonal sales patterns) may reduce any such seasonal bias.

## **Format**

Titles can be published in more than one edition, both within the one country and across countries. Editions may vary in terms of internal layout, paper quality, size, cover material and sometimes content.

For analytical purposes, comparisons of equivalent editions (see box 4.1) in principle provide the best means of ascertaining price differences between markets. Such comparisons attempt to hold the ‘quality’ of the product constant, so that any price differences do not simply reflect that higher quality products are typically more expensive than lower quality products, in whatever market they are sold. Such ‘apples with apples’ comparisons formed the basis of the bestseller surveys undertaken by the ACCC, the main comparisons undertaken by the Commission and some comparisons submitted by participants.

In addition, some participants compared the prices of the ‘first available’ edition in each country (and others did not control for differences in editions at all). The format in which the Australian edition of a title is first available is sometimes different from the format(s) available overseas. For instance, unlike the UK and the US where titles are frequently first released in a hardback edition, titles tend to be first released in Australia as a large C format trade paperback. Such comparisons effectively compare the price of a higher quality item (a hardcover edition of a book) with a lower quality item (a paperback edition). In a similar vein, the Commission undertook a supplementary analysis that compared the price of the ‘lowest cost’ edition of particular titles available in the different markets (see below).

## **D.2 Details of the Commission’s price comparisons**

### **Data**

The Commission’s price comparisons use data from The Nielsen Company’s BookScan database, which contains extensive retail data for trade sales (see box D.3). Specifically, the price comparisons are based on the top 5000 trade sales captured in the Australian BookScan database, the top 5000 captured in the UK database and the top 5000 (for each of the fiction, non-fiction and children’s categories) in the US database.

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The following variables are available in the BookScan database for each edition:

- identification variables — including title, author, imprint, publisher and ISBN
- sales and price variables — the total volume and value of books sold, as well as the RRP and the ASP
- category variables — including the broad format (ie hardback or paperback) and the product class (fiction, non-fiction or children's)
- the publication date and country.<sup>2</sup>

While the Australian and UK BookScan databases are limited to the binary (hardback or paperback) classification of editions, the US BookScan database uses a somewhat different and more detailed format classification system (including categories such as mass market paperback, trade paperback and hardcover). However, detailed information on the format of each edition (such as A format, B format, trade paperback or hardback) was obtained from the Nielsen BookData database (see box D.3) for Australia and the UK. (The same detailed format information was not available from the BookData database for the US.)

### **Box D.3 The Nielsen databases**

#### **Nielsen BookScan**

Nielsen BookScan is a continuous retail monitoring service for English-language trade books in several countries including Australia, the UK and the US. It collects transaction data at the point of sale directly from tills and despatch systems. (Similar data is not available in the Nielsen BookScan database for education sales.)

The panel of retailers includes chains, independent retailers, discount departments stores and some online retailers. The retail panel accounts for the majority of trade sales in each country — the BookScan database is estimated to capture around 90 per cent of all retail trade sales to consumers in Australia and the UK and around 75 per cent of all retail trade sales to US consumers.

#### **Nielsen BookData**

Nielsen BookData is a global bibliographic database that holds records for more than 7.5 million titles, including detailed information relating to the various local and foreign editions of an individual book title, such as its format, country of publication, publisher, distributors and publication date. Information is collected from publishers and other data providers from over 70 countries (including Australia, Europe, Ireland, New Zealand, South Africa, the UK and the US).

*Sources:* Nielsen BookScan (2008a, 2008b, 2009) and Nielsen BookData Online (nd).

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<sup>2</sup> The country of publication is not available in the US BookScan database

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## Method

The Commission estimated price differentials using the following approaches:

- Australian RRPs were compared to (a) UK RRPs and (b) US RRPs for ‘like’ editions of the same title
- Australian (point-of-sale) ASPs were compared to UK ASPs for ‘like’ editions of the same title. (ASP data is not available for US sales.)

The Commission supplemented these like-with-like comparisons by comparing the RRP (and, for Australia and the UK, the ASP) of the lowest cost Australian edition of a title to (a) the price of the lowest cost UK edition and (b) the lowest cost US edition.

### *Matching books*

For all comparisons, Australian and overseas editions were first matched by title and author. To aid this process, the Commission standardised the ‘title’ and ‘author’ fields between the Australian, UK and US databases. For instance, records were standardised in the case where only the author’s initial and surname was recorded in one database, but their full name was recorded in another.

For the like-with-like comparisons, editions were then matched on the basis of the ISBN and/or (detailed) format details in the databases.<sup>3</sup> To aid in matching by format, ‘hardcover’ in the US database was standardised with ‘hardback’ in the Australian database, and ‘trade paperback’ in the US database was matched with ‘trade paperback (US)’ and ‘B format paperback’ in the Australian database.<sup>4</sup> Matches where the Australian and overseas editions were published more than two years apart were excluded from the analysis (though sensitivity analysis revealed that this constraint had little impact on the results). These processes resulted in 916 and 974 matches of editions in Australia and the UK, for 2007-08 and 2008-09

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<sup>3</sup> Detailed format information, obtained from the Nielsen BookData database, was available for around one quarter of the top 5000 books in the Australian BookScan database.

<sup>4</sup> For the comparisons in the discussion draft, ‘trade paperback’ in the US database was standardised with ‘trade paperback (US)’ in the Australian database. Five US editions matched with Australian editions on this basis. All other ‘trade paperbacks’ in the US database were not included in the analysis.

As discussed in chapter 4, for the comparisons in this final report, the Commission has additionally matched editions listed as ‘trade paperbacks’ in the US BookScan database with those labelled as ‘B format paperbacks’ in the Australian database. There can be some size and quality differences between these books but, in general, they are sufficiently comparable in the Commission’s view to be included in the like-with-like comparisons. This change expands the sample size in the Australia-US like-with-like comparisons by 117 matches for 2007-08.

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respectively, and 347 and 320 matches of editions in Australian and the US. The sample size in the Australia-US comparisons was limited by the absence of format detail for some editions. As well, as noted in chapter 4, the Commission opted not to match ‘mass market paperbacks’ in the US database with A format paperbacks in the Australian database.<sup>5</sup>

For the lowest cost comparisons, the format and publication date were allowed to vary. Relaxing these constraints meant that the number of matches increased to almost 1400 for the Australia-UK exercise and to more than 1100 for the Australia-US exercise.

### *Adjustments and other issues*

The following adjustments were applied to RRP and ASPs in all comparisons:

- Sale taxes were removed from all prices. Accordingly, the 10 per cent Goods and Services Tax (GST) was excluded from the Australian price. Since no Value Added Tax (VAT) is applied to books in the UK and no federal tax is applied to books in the US, these prices were not adjusted for taxes. While a sales tax is applied to books in some states in the US, unlike the GST this tax is applied on top of the RRP (Nick Earls, sub. 17) and therefore should not impact on the analysis.
- Overseas prices were converted into Australian dollars using the average of the daily exchange rate over the period to which the comparisons related. This method follows that used in the earlier ACCC/PSA price comparisons and avoids the use of particular extreme (high or low) exchange rates that may have prevailed at particular times during an assessment period.
- Both the unweighted (or simple) and weighted averages are reported below. The simple average gives equal weight to all estimated price gaps in the sample. In contrast, the weighted average scales each price gap according to the total volume (or value) of sales of the Australian edition. That is, high selling Australian editions are given a greater weight compared to low selling Australian editions. The following discussion of the results focuses on simple averages.

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<sup>5</sup> US mass market paperbacks and A format paperbacks are of similar dimensions, but the US mass market paperbacks tend to be printed on lower quality paper and have a lower quality appearance. While there is a case for their inclusion in the like-with-like comparisons (possibly with an adjustment to reflect quality differences), the Commission has taken a more conservative approach and omitted these matches. (For the 2007-08 Australia-US like-with-like comparisons, inclusion of these matches would increase the estimated average price gap, on a like-with-like basis, from 35 per cent to 48 per cent.)

## Results

### *Like-with-like price comparisons*

For like editions in 2007-08, Australian prices are estimated, on average, to have exceeded UK prices for like editions by 9 per cent (on an RRP basis) and 18 per cent (on an ASP basis), and US prices (on an RRP basis) by 35 per cent.

For 2008-09, the equivalent estimates are 12 per cent (UK: RRP basis), 25 per cent (UK: ASP basis) and 12 per cent (US: RRP basis) (see table D.1).

**Table D.1 Like-with-like price comparisons, 2007-08 and 2008-09**

The extent to which the Australian price exceeds the UK/US price.

	<i>Australia – UK</i>			<i>Australia – US</i>		
	<i>Mean (%)</i>	<i>Median (%)</i>	<i>N<sup>a</sup></i>	<i>Mean (%)</i>	<i>Median (%)</i>	<i>N<sup>a</sup></i>
<b>2007-08:</b>						
<b>RRP basis</b>						
Unweighted price difference	9	10	910 <sup>b</sup>	35	31	347
Weighted (by volume)	10	12	910	35	31	347
Weighted (by value)	11	12	910	35	34	347
<b>ASP basis</b>						
Unweighted price difference	18	15	916			
Weighted (by volume)	17	17	916			
Weighted (by value)	19	19	916			
<b>2008-09<sup>c</sup>:</b>						
<b>RRP basis</b>						
Unweighted price difference	12	11	961 <sup>b</sup>	12	12	320
Weighted (by volume)	10	10	961	11	12	320
Weighted (by value)	12	11	961	12	12	320
<b>ASP basis</b>						
Unweighted price difference	25	23	974			
Weighted (by volume)	19	16	974			
Weighted (by value)	22	18	974			

<sup>a</sup> N is the number of like-with-like matches. <sup>b</sup> The RRP was missing from the Nielsen BookScan database for six books in 2007-08 and 13 books in 2008-09, as a result these matches could not be included in the RRP analysis. <sup>c</sup> Data was only available for the 11 month period from 1 July 2008 to 31 May 2009.

Source: Productivity Commission estimates based on the Nielsen BookScan and BookData databases.

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The estimated price differences for the matched editions in the sample varied around these averages (figure D.2). For instance, while the average price (RRP) in Australia was 9 per cent higher than in the UK in 2007-08, the price differentials for the middle two thirds of the sample ranged from between 7 per cent lower to 25 per cent higher. The Australian RRP exceeded the UK and US RRPs for a like edition in around 80 per cent and 95 per cent of cases respectively in 2007-08, and in around 80 per cent of cases with the UK and the US in 2008-09.

To help test whether the ‘average’ results reported above are sensitive to outliers in the sample, the Commission also calculated ‘median’ price differentials. The median price gaps were found to be similar to the average price gaps (table D.1).

The Commission also undertook an exercise to illustrate how such results can vary depending on the exchange rate used. It found that the estimated average price gap (based on RRPs for 2007-08) of like editions between Australia and the UK and US, respectively, would have been eliminated had exchange rates of GBP 0.41 and USD 0.67 been used. Using ASPs, the Australian-UK estimated average price gap for like editions in 2007-08 would have been eliminated had an exchange rate of GBP 0.38 been used.<sup>6</sup> This demonstrates that, *all else equal*, a depreciation of the Australian dollar increases the price competitiveness of locally published books and reduces the incentive to import books (as is the case with all products).

Importantly, for the purposes of this simple illustration, prices in Australia were held constant, rather than being adjusted to reflect the effects of the imposed exchange rate movements. In practice, it is likely that domestic book prices will respond over time to movements in the Australian dollar, especially those as large as the recent movements against the US currency. This is one reason why it should not be assumed that the price of Australian books will be equal to or lower than the price of like books in the UK or US whenever the Australian dollar is at or below the exchange rates (GBP 0.41 and USD 0.67) reported above for the RRP comparisons, as was suggested by some participants (see, for example, subs. DR334, DR387 and DR442) and more recently in a study released by the Australian Publishers Association (2009b).<sup>7</sup>

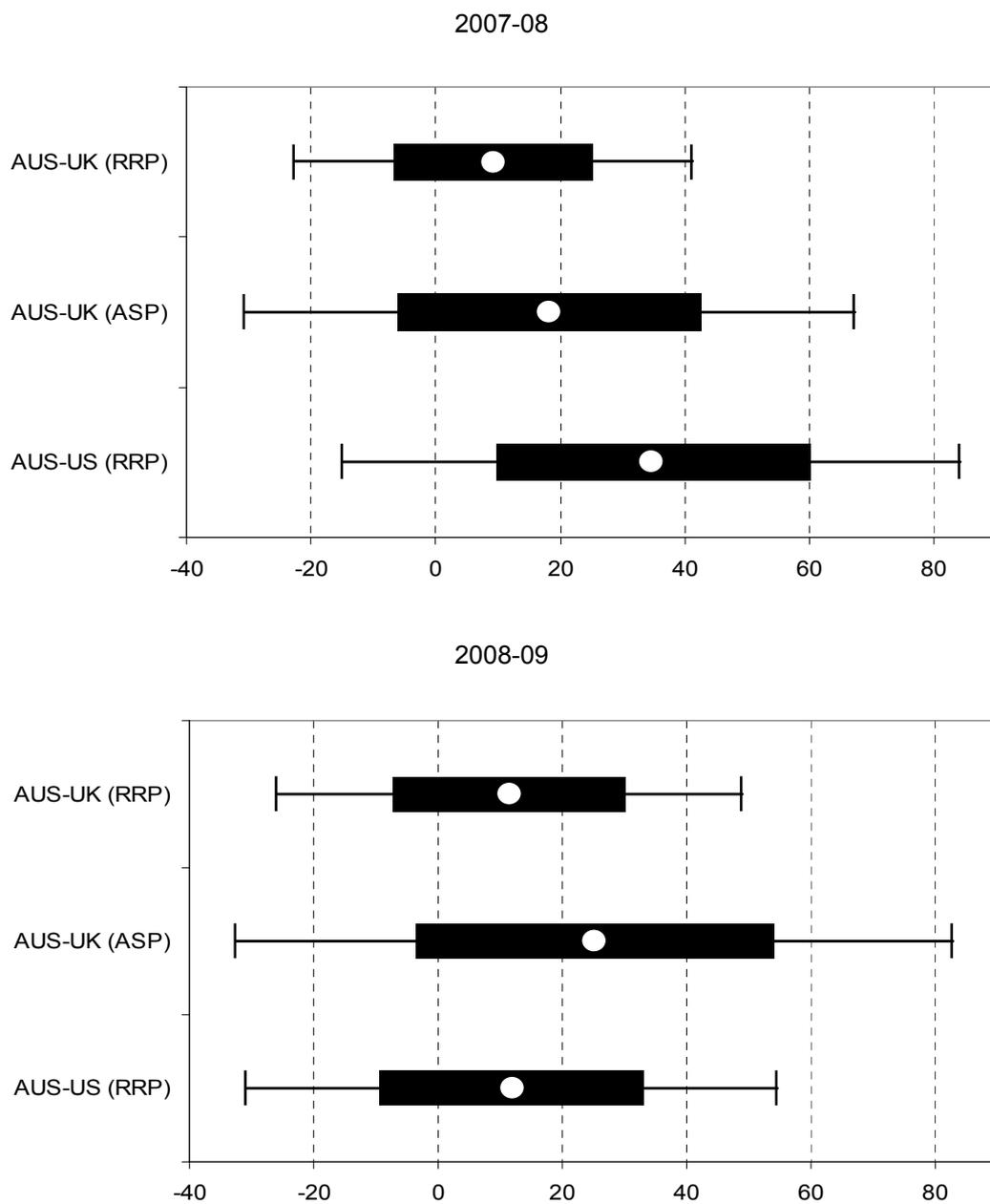
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<sup>6</sup> The exchange rates at which the estimated average price gap would be eliminated in the lowest cost analysis were GBP 0.40 and USD 0.57 on an RRP basis, and GBP 0.37 on an ASP basis.

<sup>7</sup> In their submissions, participants used the exchange rate of USD 0.69 as the ‘switch point’ for a reversal of the direction of price gaps between Australia and the US. This was based on the estimates presented in the discussion draft of an average book price difference between Australia and the US of 30 per cent. For this final report, the Commission has expanded its sample size by matching US trade paperbacks with B format paperbacks (see above), which has resulted in an estimated average price difference to 35 per cent. Accordingly, the illustrative switch point presented in this final report, of USD 0.67, is slightly lower than that presented in the discussion draft, and cited by participants.

**Figure D.2 The range of price gaps for like-with-like comparisons, 2007-08 and 2008-09<sup>a</sup>**

Per cent



<sup>a</sup> The 'white dots' represent the average value, the 'black boxes' represent the range of price gaps for two thirds of the sample and the 'whiskers' represent the range of price gaps for 95 per cent (or two standard deviations away from the mean) of the sample.

*Data source:* Productivity Commission estimates based on the Nielsen BookScan and BookData databases.

### Lowest cost price comparisons

The results of lowest cost price comparisons indicate that, where different editions of titles are available in the these markets, the price of the cheapest available edition of titles in Australia is typically higher (table D.2). On average, the cheapest available edition of a title in Australia was estimated to be:

- 13 per cent higher in RRP terms and 22 per cent higher in ASP terms, compared to lowest cost UK edition in 2007-08, and 13 per cent and 27 per cent, respectively, in 2008-09
- over 50 per cent higher in RRP terms compared to the lowest cost US edition in 2007-08, and 27 per cent higher in 2008-09.

**Table D.2 Lowest cost price comparisons, 2007-08 and 2008-09**

The extent to which the Australian price exceeds the UK/US price.

	<i>Australia – UK</i>			<i>Australia – US</i>		
	<i>Mean (%)</i>	<i>Median (%)</i>	<i>N<sup>a</sup></i>	<i>Mean (%)</i>	<i>Median (%)</i>	<i>N<sup>a</sup></i>
<b>2007-08:</b>						
<b>RRP basis</b>						
Unweighted price difference	13	8	1376	58	45	1201
Weighted (by volume)	16	13	1376	49	36	1201
Weighted (by value)	21	13	1376	48	31	1201
<b>ASP basis</b>						
Unweighted price difference	22	14	1384			
Weighted (by volume)	25	19	1384			
Weighted (by value)	34	26	1384			
<b>2008-09<sup>b</sup>:</b>						
<b>RRP basis</b>						
Unweighted price difference	13	8	1379	27	16	1115
Weighted (by volume)	15	11	1379	21	12	1115
Weighted (by value)	21	14	1379	22	12	1115
<b>ASP basis</b>						
Unweighted price difference	27	21	1396			
Weighted (by volume)	31	20	1396			
Weighted (by value)	40	26	1396			

<sup>a</sup> N is the number of title matches. <sup>b</sup> Data was only available for the 11 month period from 1 July 2008 to 31 May 2009.

Source: Productivity Commission estimates based on the Nielsen BookScan and BookData databases.

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## Some interpretation issues

As the Commission noted in chapter 4, even with the methodological safeguards built into its comparisons, a number of specific aspects of the approaches adopted mean that caution is needed in interpreting the results.

To reiterate, first, the Commission's comparisons relate only to two one-year time periods and as such do not indicate how price differentials respond to changes in the competitiveness of the local book sector over longer periods. That said, the Commission's comparisons were for the financial year immediately prior to the recent fall in the value of the Australian dollar against the US currency, and the year since, and so provide a useful indication of the (short term) effects of exchange rate change on measured price gaps.

Second, as the comparisons are based on RRP and ASP data, they suffer from the inherent limitations (as well as advantages) of such exercises (see section D.1). While the Commission considers that use of RRPs is a reasonable approach for comparisons with the UK, it has not been able to test the average discount from RRPs offered in the US. Nevertheless, the Commission notes the views of the Coalition for Cheaper Books (sub. 218), and the use of RRP-based comparisons with the US by other participants, suggesting that such comparisons, although imperfect, are still a reasonable basis to draw some conclusions about price relativities between the markets. In addition, there are potential biases associated with the use of ASP data, due to variations in the importance of different retail channels across markets.

Third, for its like-with-like comparisons, the Commission sought to match trade books sold in Australia to like editions sold in the UK or the US. Although the Commission sought to control for format, and restricted the comparisons to editions that were published within two years of one another, there are complexities in ensuring the comparison of editions that are sufficiently similar to be considered 'like editions'. Among other things, any cross-country variations in content, such as cultural re-editing, would remain in the matched editions, as would any differences in production quality and general content not picked up in the format data.

Finally, while making allowance for the levying of GST on books in Australia, the Commission has not sought to adjust retail prices to reflect differences in freight costs. As noted in chapter 4, for this and a range of other reasons, the results of these comparisons are at best an indication of gaps between the observed retail prices of books in the different countries; they do not of themselves attempt to indicate the price at which the books sold in other countries *could* have been sold in Australia.

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## Concerns raised by participants

A small number of supplementary submissions queried aspects of the methodologies underlying the Commission's price comparisons, as presented in the discussion draft.

Among others, Hachette Australia stated:

In Appendix D, the Commission has gone to commendable lengths in explaining its methodology in establishing if book prices are higher in Australia. However, the methodology is fundamentally flawed, in three respects:

- a) A "trade paperback" in the US is a completely different format to a "trade paperback" in Australia, or the UK, and yet a matching of the two were performed by the Commission. This distorts the results, as they are not like for like.
- b) An average exchange rate of GBP 0.45 and USD 0.90 has been used, on the basis that the ACCC and PSA used the same methodology in earlier cases. As is well known, both the ACCC and PSA reports were the subject of considerable rebuttal by various agencies at the time of their publication. No other reason is given by the Productivity Commission for the selection of an average exchange rate in 2007/08 (in the case of the USA, the highest level in living memory), rather than a more realistic period.

The Productivity Commission then goes on to point out that, had GBP 0.41 and USD 0.69 been used, then the price gap "*would have been eliminated*". A more realistic average exchange rate is the ten year average, which is quoted at GBP 0.40 and USD 0.69, and would thus eliminate any price gap, which the Productivity Commission perceived.

- c) No freight element has been factored in, and thus, assumes that an Australian consumer can access a book from the US and UK, with no cost of delivery. This is a fanciful notion.

It is for the above reasons that Hachette contends, along with many other submissions, that it is not proven that prices in Australia are generally more expensive than the US or UK. Furthermore, to the extent that any perceived difference "*might exist*", it would fall into a reasonable margin of error. (sub. DR480, p. 2)

On another matter, Daniele Clode submitted:

The report correctly notes that comparing first editions across countries may introduce systematic errors, given the higher proportion of hardback first editions overseas. The report then compares "like-with-like" versions of titles, which presumably compares similar paperback editions ... however it appears that this would compare first edition Australian paperbacks (marketed at a premium price) with later edition overseas paperbacks (which are likely to be lower in price). The report thus replaces one potential source of error with another, possibly greater, source. Clearly this data requires an analysis of covariance, which could control for variance due to factors like format and time since publication, clearly identifying that variance in price that is due to country of origin. (sub. DR276, p. 2)

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The Commission has reviewed its methodologies and conclusions in the light of the comments received and considers them to be appropriate. To elaborate:

- a) The format data provided in the Nielsen Company's BookScan databases for both Australia and the UK classify trade paperbacks as either a 'trade paperback UK' or a 'trade paperback US'. The use of the same terms allowed direct matches. As mentioned above, however, the format classification system in the US database was somewhat different. In particular, in the US database, trade paperbacks were not separated into US and UK trade paperbacks. For the price comparisons reported in the discussion draft, 'trade paperback' in the US database was standardised to 'trade paperback US' and matches between Australia and the US were made accordingly. This standardisation procedure did not result in many additional matches (as there were only 5 such matches in total and, in most cases, the matched editions also exhibited the same ISBN). As noted earlier, for the Australia-US like-with-like comparisons in the final report, the Commission has expanded its sample to include matches of trade paperbacks in the US with B format paperbacks in Australia. At no time, however, has the Commission matched US trade paperbacks with Australian or UK (C format) trade paperbacks.
- b) The Commission used the average exchange rate over 2007-08 for the price comparisons in the discussion draft as this matched the sales period for which BookScan data was obtained. 2007-08 was the latest financial year data available when the Commission obtained the data. The use of the average daily exchange rate over a financial year avoids the effects of using any particular, extreme (high or low) exchange rates that may have prevailed at particular times during the year. The Commission is unaware of any (robust) criticisms of the method used for calculating average exchange rates.

In reporting the results of its comparisons, both in the discussion draft and in this final report, the Commission has been careful to highlight that the comparisons were for one year periods only and that changes in the exchange rate would affect the comparisons subsequently. The Commission also provided an illustration of the effects of using a different exchange rate on estimated price differentials calculated using 2007-08 data. However, as discussed above, it should not be concluded from that illustration that, *in practice*, the average price gap between Australia and the UK or US would be zero at the 'switch point' exchange rate calculated as part of that illustration. As the Australian exchange rate falls relative to the UK and US, the Commission would expect Australian RRP's to increase over time relative to those abroad, thus limiting the narrowing of the price gaps.

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- c) The Commission did not assume that Australian consumers can access books from the UK or US at zero freight cost. Rather, in chapter 4, the Commission noted the difficulties in determining an appropriate adjustment for freight costs and stated:

[W]hile making allowance for the levying of GST on books in Australia, the Commission has not sought to adjust retail prices to reflect differences in freight costs.

For this and a range of other reasons, the results of these comparisons are at best an indication of gaps between the retail prices of books in the different countries; they do not attempt to indicate the price at which the books sold in other countries *could* have been sold in Australia.

- d) The Commission did not claim in the discussion draft to have proven on the basis of its price comparisons that prices in Australia ‘are generally more expensive than the US or UK’. Rather, the aim of the Commission’s analysis in chapter 4 was to determine whether there would be opportunities, in the absence of PIRs, for the parallel importation of cheaper or better value books into Australia.

As explained earlier, what matters in assessing whether PIRs have price impacts is not whether the average price of books is higher or lower in Australia compared to other markets, either at a point in time or over time, but rather whether there would be opportunities, from time to time, for the importation and sale of at least a subset of books at lower prices from abroad. Thus, it is pertinent for assessing the effects of PIRs to recognise that movements in the currency would, in the absence of those restrictions, occasionally provide opportunities for Australian booksellers to source some stock quite cheaply from markets such as the US.

Further, the Commission’s comparisons were only one of a number of pieces of evidence that the Commission used to form a judgment on this matter. Other evidence drawn on included price comparisons submitted by participants (including Hachette Australia), undertaken using much lower exchange rates, and in some cases incorporating adjustments for assumed freight costs.

- e) In relation to Dr Clode’s submission, as noted above, what is relevant for gauging the price effects of the PIRs is whether there would be opportunities to source some books at lower cost from the UK or US (or elsewhere) than from a local publisher in the absence of the restrictions. From this perspective, the reason that such opportunities might exist — whether it be lower production costs or different release strategies in other markets — does not impact the analysis.

**Table D.3 Selected participants' price comparisons**

<i>Participant</i>	<i>Methodology</i>	<i>Results</i>
Australian Publishers Association (sub. 244, 2009a)	<p>The Australian Publishers Association surveyed 11 bestselling trade titles in Australia in December 2008 and 10 bestsellers in January 2009. On both occasions it compared the RRP in Australia to the:</p> <ul style="list-style-type: none"> <li>• US and UK RRP (based on data from booksellers' websites)</li> <li>• discounted Amazon.com price plus shipping.</li> </ul> <p>Overseas prices were converted into Australian dollars using the average monthly exchange rate — around USD 0.68 and GBP 0.47 in January 2009. The comparisons were based on the first released edition in each country, regardless of format.</p>	<p>In the December 2008 comparison, based on RRP and the Amazon-plus-shipping price, across all 3 countries, the Australian RRP was:</p> <ul style="list-style-type: none"> <li>• highest for 3-out-of-11 titles; and</li> <li>• lowest for 3-out-of-11 titles.</li> </ul> <p>In the January 2009 comparison, the Australian RRP was:</p> <ul style="list-style-type: none"> <li>• highest for 1-out-of-10 titles; and</li> <li>• lowest for 3-out-of-10 titles.</li> </ul> <p>Across the two time periods, the Australian RRP was higher than the UK RRP for 9-out-of-16 unique titles, and higher than the US RRP for 6-out-of-16 titles.</p>
Australian Society of Authors (sub. 70)	<p>In November 2008, the Australian Society of Authors selected 5 titles and compared the Australian RRP (and discounted Dymocks price) to the 'list' price in four other English language markets — the US, UK, New Zealand and Canada (allowing formats to vary).</p> <p>Overseas prices were converted into Australian dollars at a rate of around USD 0.64 and GBP 0.43.</p>	<p>Prices were found to vary across countries, with Australian prices sometimes higher and at other times lower than the overseas price. For instance, the data suggest that the Australian RRP was higher than the UK list price for 3 titles and lower than the UK list price for 2 titles.</p>
Coalition for Cheaper Books (sub. 218)	<p>The Coalition for Cheaper Books compared the Australian RRP (excluding GST) to the US RRP and the UK RRP for a selection of 11 international bestselling titles at the end 2008. (The format of the editions compared was not identified.)</p> <p>Overseas prices were converted into Australian dollars at the rate of USD 0.70 and GBP 0.48.</p>	<p>In most cases, the Coalition found that the RRP of the Australian edition was higher than the RRP of the equivalent UK and US edition. The average price gap of the sample was around 30%.</p>
Hachette Australia (sub. 232)	<p>For their top 20 bestselling titles in 2008, Hachette compared the:</p> <ul style="list-style-type: none"> <li>• Australian RRP to the US RRP</li> <li>• Australian average selling price (excluding GST, sourced from Nielsen BookScan) with the Amazon.com price.</li> </ul> <p>The US RRP was converted into Australian dollars using the 20 January 2009 exchange rate (USD 0.68).</p>	<p>Around three quarters of the top 20 selling titles sampled were cheaper in RRP terms in Australia than in the US, and one quarter were more expensive in Australia.</p> <p>After accounting for an individual postage and packing charge of \$15.44 per book, none of the titles could be obtained more cheaply from Amazon.<sup>a</sup></p>

(Continued next page)

**Table D.3 continued**

<i>Participant</i>	<i>Methodology</i>	<i>Results</i>
Harlequin Enterprises (Australia) (sub. 239)	Harlequin compared the Australian RRP of 4 of its leading titles (also available in the US in 2008/2009) to the 'equivalent' US RRP. The Australian dollar equivalent of the US RRP was estimated by: (1) grossing up the US RRP by 30% for freight (2) adding 10% for GST (3) converting the prices at the average exchange rate of USD 0.85.	Harlequin found that the Australian RRP was lower than the equivalent US RRP for all 4 titles. Based on Harlequin's sample, on average, the Australian RRP was 28% lower than the 'equivalent' US RRP.
Leading Edge Books (sub. 254)	For 16 international bestselling titles sold by its members, Leading Edge Books compared the Australian RRP and ASP to the 'equivalent Australian sell price' in the US and UK in November 2008 (allowing formats to vary in some cases). The UK/US 'equivalent Australian sale' price was estimated by: (1) discounting the UK RRP (from Amazon.co.uk) and the US RRP (from Amazon.com) by roughly 40% to estimate the wholesale price (2) adding estimated air freight (3) grossing up the 'wholesale price plus air freight' by 45% (4) converting into Australian dollars using the November 2008 exchange rates (USD 0.69 and GBP 0.423).	By comparing the Australian and overseas publication date, 8 internationally published titles that retained territorial copyright (ie complied with the 30 day rule) were identified. Of these, the Australian price was less than the equivalent US price in all cases, and the Australian price was less than the equivalent UK price in all but one case. Of the 8 internationally published titles that did not retain territorial copyright, the price in Australia was somewhat more expensive than the equivalent US price for 5 books and the equivalent UK price for 3 books.
Random House Australia (sub. 193)	Focusing on their top 10 bestselling books in 2008, Random House Australia compared the RRP for the first available (trade paperback) Australian edition against the 'equivalent' RRP for the first available (hardcover) US edition. The 'equivalent' US RRP was estimated by: (1) grossing up the US RRP by 30% for freight (2) adding 10% for GST (3) converting the prices at the average exchange rate of USD 0.85.	For the 7 best selling books available in Australia and the US, the survey results imply that the RRP of the first available Australian edition was between 24% and 30% lower compared to that of the first available US edition.
Walker Books Australia (sub. 256)	Walker Books compared the Australian RRP to the US and UK RRP for 14 of their bestselling children's titles. Overseas prices were converted into Australian dollars at the rate of USD 0.70 and GBP 0.49.	Of the 14 titles considered, the Australian RRP (excluding GST) was higher than the UK RRP for 8 titles for both the US and UK. However, these price gaps were 12% or less for 6 out of 8 titles in the Australia-UK comparisons and for 4 out of 8 titles in the Australia-US comparisons. Based on Walker Books' sample, the Australian price was, on average, 2% lower than the UK and US RRP.

<sup>a</sup> While the Amazon.com price plus (individual) freight may act as a bound on the price currently available to Australian consumers, if the PIRs were removed, retailers could most likely import bulk copies at a lower freight cost per book.



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## E Market share and income leakage methodology

As discussed in chapter 2, information on the market share of ‘Australian’ books that was available to the Commission at the start of this study was dated and characterised by variable definitions. Although previous studies and commentary have typically relied on the share of Australian-published or originated books, these include a significant proportion of foreign-authored works.

To ensure a better evidence-base, the Commission has undertaken its own analyses. In the first instance, this appendix outlines the Commission’s methodology to estimate the Australian-authored books’ share of the Australian market. Using this market share estimate, the Commission then estimates the likely degree of income leakage from the Australian economy that is a consequence of the operation of Australia’s Parallel Import Restrictions (PIRs). This leakage occurs because the PIRs raise the price of foreign-authored books as well as Australian-authored books in the local market. Some of this price increase for foreign-authored works will be ‘captured’ by the foreign author and/or publisher which created the work and then sold its rights to an Australian publisher or sold its book to the market directly.<sup>1</sup>

In undertaking these analyses, the Commission initially examined all editions in the top 5000 trade books sold in Australia in 2007-08 (worth around \$670 million), as captured by The Nielsen Company’s BookScan database (see box D.3). Following the discussion draft, the Commission extended its analysis to incorporate the remaining ‘tail’ of trade books sold in 2007-08, which comprised around 455 000 editions (worth around \$530 million). The Commission analysed a sample of 2500 of these editions, using statistical techniques designed to enhance the precision of the resultant estimates.<sup>2</sup>

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<sup>1</sup> As noted in chapter 7, technically speaking, there is a leakage of ‘economic rent’ — returns earned from resources in excess of those necessary to induce the use of those resources in a particular activity. This leakage should be distinguished from ordinary payments for imports.

<sup>2</sup> A random sample of 2500 titles was drawn, stratified on the basis of six equal value strata to account for possible changes in the share of Australian-authored and PIR protected books with changing sales value. Sample allocation among the strata followed a Neyman allocation method which allows optimal allocation when the sample size is fixed (Cochran 1977).

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## E.1 Estimating the share of Australian-authored books

To estimate the market share of Australian-authored books, the Commission checked the nationality of each author represented in Australia's 5000 top selling trade editions as well as each author in the 2500 sample of the tail.

The Commission adopted a broad definition of Australian authorship. Books were deemed to be Australian-authored if the author:

- was born in Australia and resides here
- was born in Australia, but resides principally overseas
- was born overseas, but resides principally in Australia
- is one of several joint authors and fitted any of the above definitions, even if some or all of the other joint authors did not do so.

Authors' nationalities were identified using a wide array of sources, including:

- author and publisher submissions to this study
- the AustLit data base of creative and critical Australian literature works — a joint collaboration between 12 Australian universities and the National Library of Australia
- a variety of online sources including author websites and publisher websites that listed their authors' biographical details.

The Commission directed considerable resources at these searches and established whether the author fitted the above definition, with reasonable certainty, for around ninety-five per cent of authors (by value of editions).

However, recognising that, as with all such exercises, there would remain some scope for classification error, the Commission has taken a conservative approach to minimise any risk that it might underestimate the share of Australian-authored works, including by adopting the broad definition of an Australian-authored book (see above).

On this basis, the Commission estimates that Australian-authored works accounted for around one-third, in both value and volume terms, of trade books sold in Australia in 2007-08.<sup>3</sup>

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<sup>3</sup> In value terms, Australian-authored works accounted for 38 per cent of the top 5000, and 24 per cent of the tail. The weighted average estimate is 32 per cent, with a 95 per cent confidence interval of 29–36 per cent calculated using the STATA statistical package. In volume terms, Australian authored books were estimated to account for around 31 per cent of total sales.

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## E.2 Estimating the income leakage

In developing a broad estimate of the income leakage, the Commission made a number of simplifying assumptions:

- the price-raising effect of PIR protection is uniform across all foreign- and Australian-authored books
- additional net returns to copyright holders from PIRs flow to the author's home country
- all Australian-authored books are technically PIR-protected because they are, in the main, first published in Australia.

Proceeding from these assumptions, the Commission sought to estimate the share of the foreign-authored books that were formally protected by Australia's PIRs under the 30 day rule. Using the data and methodology described in box E.1, foreign-authored trade books that qualified for PIR protection were estimated to have accounted for around 70 per cent of the retail value of all foreign-authored trade books sold in Australia during 2007-08.<sup>4</sup>

On this basis, the Commission estimates that for every dollar that accrued to the copyright holders of Australian-authored trade books sold in 2007-08, due to the PIRs, around 150 cents would have accrued to those foreign-authored works that were PIR-protected — calculated as the share of foreign-authored sales (68 per cent) multiplied by the proportion that were PIR-protected (70 per cent) and divided by the share of locally authored sales (32 per cent). In other words, around 60 per cent of the assistance that PIRs provide to authors and publishers is estimated to leak offshore.

The assumptions required to calculate the income leakage ratio, together with the need to determine the PIR protection status of individual editions, mean that the resultant estimate should be considered indicative rather than precise. In two key respects, however, the Commission has taken a conservative approach to estimating the extent of the leakage ratio.

First, some additional leakage is likely to occur in relation to the sale of foreign-authored titles that, while not technically PIR-protected, benefit from the upward pressure on prices in the market consequent upon the restrictions. Further, as discussed in chapter 5, the PIRs could exert a 'silent policeman' effect such that industry participants treat some books that are not formally PIR-protected as if they are, for example to avoid any risk of inadvertently breaching regulatory requirements or out of a desire to maintain existing commercial relationships.

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<sup>4</sup> By value, the estimated share of foreign-authored works with PIR protection was 90 per cent in the top 5000, and 46 per cent of the tail.

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### Box E.1 **Estimating the value share of foreign-authored books that are PIR-protected**

To estimate the extent of the income leakage due directly to the PIRs, those books that are technically protected by the PIRs were first identified. In the case of Australian-authored books, the Commission has assumed that all are PIR-protected. In the case of foreign-authored books, the Commission individually checked the PIR status of sampled editions:

- For the top 5000, the PIR status was checked for a stratified random sample of 500 editions. Sampling was stratified on the basis of six equal value strata to account for possible changes in the likelihood of PIR protection with changing sales value. (The survey later confirmed that better selling editions in the top 5000 were more likely to be PIR-protected.) Sample allocation among the strata followed a Neyman allocation method.
- The PIR status was checked for all foreign-authored editions in the ‘tail’ sample.

The PIR status (protected or not protected) was individually determined for each book in the sample by comparing its earliest release date in any print format for Australia (as listed in Nielsen BookScan) with those of other countries (as listed in The Nielsen Company’s BookData database — see box D.3).

Foreign-authored books that were released in Australia within 30 days of publication overseas (in any book format) were deemed to be PIR-protected. Although the Commission recognises that, at any one time, some of these may not be compliant with the 90 day rule, it is likely that, in practice, the majority would either be PIR-protected, or would be treated by industry as though they remained PIR-protected.

The sample included around four per cent of books (by value) for which the Commission could not establish their PIR protection status with reasonable certainty.

Second, many Australian-authored books do not appear amenable to significant, if any, parallel importation, and thus receive little or no direct benefit from their PIR-protected status. Analysis using the Nielsen BookData database suggests that, in value terms, around 72 per cent of Australian-authored trade books do not have export editions. If the value of these Australian titles was excluded from the calculation, the estimated share of assistance to copyright holders that leaks off-shore would be closer to 85 per cent.

That said, domestic titles that do not have foreign editions might also benefit from the upward pressure on prices in the market generally, consequent upon the PIRs. In addition, analysis using the BookData database also indicates that the majority of books without an export edition are likely to have an overseas distribution agreement (67 per cent, including 6 per cent with an Australia/New Zealand distributor only). While local publishers have greater contractual control over volumes supplied and prices charged under these circumstances, there could be scope for some of those books to be re-imported in the absence of PIRs.

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## F Design of financial support for book producers

Australia, like other countries, currently provides subsidies and other financial support for book related activity, in addition to legislated Parallel Import Restriction (PIR) protection. The three main mechanisms — the Australia Council Literature Board grants, the Public Lending Right scheme and the Education Lending Right scheme — expend around \$25 million annually on authors, publishers and other parties. In addition, Australian governments award various literature prizes and encourage literacy and reading through other programs. The rationale, eligibility, administration and payment rates for each program differ.

As noted in chapter 6, the rationale for industry assistance for local book producers arises principally from the ‘externality’ component of the cultural and related benefits that Australian books generate — benefits for the community beyond those reflected directly in the market value of local books.

The Commission found that the external benefits dependent on the PIRs are unlikely to be large. It also found that direct subsidies are potentially a more cost-effective mechanism for addressing externalities than PIRs, not least because of the substantial leakage of PIR assistance offshore.

For the reasons set out in chapter 7, the Commission has not recommended that the assistance provided by the PIRs be replaced by subsidies.

It has, however, recommended that current subsidies for the local books industry be reviewed ahead of the abolition of the PIRs, and that the arrangements be reviewed again five years after their repeal. These reviews will provide an opportunity to consider the appropriateness of the existing subsidies and whether they might be improved. Among other things, such reviews could examine the case for changing some of the current subsidies to more directly assist outputs that generate cultural externalities.

This appendix sets out the current forms of subsidy, and other financial support, to the book industry, and some design issues that could be relevant to the reviews.

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## F.1 Current subsidies and other financial support

### Australia Council for the Arts Literature Board grants

The Literature Board aims to ‘support the excellence, diversity, vitality, viability and distinctiveness of Australian literature’ (Australia Council, 2009a).

The Literature Board is part of the Australia Council for the Arts. Established in 1974, the Australia Council is the Australian Government’s primary arts funding and advisory body. The Council’s vision is to ‘enrich our nation by supporting the practice and enjoyment of the arts’.<sup>1</sup>

In 2007-08, the Council received an appropriation from the Australian Government of around \$163 million and had other revenues of around \$11 million (principally contributions by federal government departments for specific projects, such as *Books Alive!*, Visual Arts and Craft strategy and Creative Communities, as well as interest of \$4 million).

The Council decides on the allocation of revenues across the art forms. In 2007-08, the Literature Board provided about \$6 million in grants and other initiatives. The \$2 million for the *Books Alive!* scheme is additional to these general allocations. The Council’s administration costs were around \$16 million, representing about 10 per cent of delivered program funding.

The Literature Board expends most of its funding allocation on grants. There are several grant categories, open to both individuals and organisations, each with different eligibility, selection criteria and payment amounts (box F.1). Grant recipients are selected on the basis on merit assessment of applications.

Over half of the grants funding, over many years, has been directed to supporting individual authors in the creation stage, as distinct from being linked to the publication or sale of books *per se*.

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<sup>1</sup> In April 2007, the governing Council reviewed its business plans and refocused the organisation on six strategic priorities which will frame the Australia Council’s activities over the next three years. Those six priorities are: artists’ income levels; greater appreciation for the arts; business and philanthropic involvement in the arts; knowledge centre on the arts in Australia; arts content for the digital era; and national impact of the Australia Council (Australia Council 2008a, p. 3).

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### **Box F.1 Literature Board grants and other projects**

The Literature Board administers several grant categories based on merit assessment of applications. The grant categories in 2009 cover: publishing and promotion; fellowships for highly accomplished writers; new work grants for developing and established writers and picture book illustrators; overseas and domestic residencies that provide a supportive environment for professional development; residencies with non-art businesses; overseas travel for publishers and literary agents; translation and publication of non-English works; and an annual Writer's Emeritus Award. (The triennial key organisations grant category, which cost about \$0.5 million in 2006-07, is currently under review and not at present accepting applications in 2009).

In 2006-07, 88 individuals received grants for new work and 19 received grants for residencies or fellowships (Australia Council 2007). Presentation and promotion grants were made to 92 organisations, of which about \$300 000 was for 40 overseas based entities.

Each grant category has more than one selection criteria, of which 'literary merit' and similar notions are at the core. Grant amounts for individuals vary widely. For 2009, Fellowships are \$100 000 over two years. New work grants for developing creators are \$15 000, \$25 000 or \$40 000 while established creators can apply for \$30 000 or \$50 000 per year for up to two years. Residencies with non-art industries are supported up to \$30 000. Overseas studio residencies range variously from six weeks to six months and cover living and travel expenses.

In 2009, Australian publishers can receive subsidies of \$4000 per title for new works in eligible genres by living Australian writers. (For poetry titles and play scripts the subsidies are \$2000 and \$2500, respectively). Overseas book and magazine publishers may apply for assistance to publish overseas editions of the work of living Australian writers in eligible genres; works of Australian cultural significance or issues of magazines devoted to Australian creative writing.

Aside from grants, the Literature Board engages in other initiatives, such as the annual Visiting International Publishers (VIP) program, which involves hosting overseas guests at one of Australia's prominent literary festivals. The objective is to promote rights sales of Australian titles. Since its commencement in 1998 over 300 Australian titles are claimed to have been sold as a result of VIP program meetings, worth in excess of \$3 million in rights sales. As part of 'projects and initiatives' in 2006-07, the Literature Board also provided 29 publishers about \$135 000 to attend international book fairs (Literature Board 2009).

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## Literary prizes

The Australian Government gives awards to authors for outstanding books in a number of categories. For example, the Prime Minister's Literary Awards comprise \$100 000 tax free prizes for the most outstanding fiction and non-fiction books published each year (Australian Government, 2008). State Premiers also offer a range of literary prizes. In addition, Australia's private sector sponsors a variety of literary awards such as the Miles Franklin Literary Award (\$42 000) for a published novel that best presents Australian life.

## Public and Education Lending Right schemes

The Public Lending Right (PLR) scheme commenced in 1974. The rationale for the scheme is to provide 'a measure of recompense' to Australian creators and publishers for the availability of their books in public lending libraries. In 2007-08, \$6.3 million was paid to 8575 Australian authors and \$1.4 million paid to 363 publishers (box F.2).

The rationale for the Education Lending Right (ELR) scheme is to compensate authors and publishers for the use of books held in educational institutions including school, TAFE and university libraries. The ELR is said to be unique to Australia (PLRC 2008, p. 12). The ELR was established in 2001 as part of the \$240 million Book Industry Assistance Plan, developed in response to the introduction of the GST (appendix B). In 2007-08, some \$10.5 million was paid under the ELR scheme to 10 275 writers and 383 publishers (box F.2)

## Books Alive!

The Australian Government's annual \$2 million '*Books Alive!*' program was developed in 2001 as part of the Book Industry Assistance Plan. The 'brief' was 'the development of a promotional campaign that could produce beneficial results for the book industry' (Australia Council, 2009b). The model for Books Alive was developed by a reference group, based on similar programs in the Netherlands, UK (World Book Day) and USA (Get Caught Reading).

Presently, the goal of the program is 'the promotion of books and reading to the general public, children and young people, including books by Australian writers.' (Australia Council, 2009b). It involves a range of activities including book advertising, author appearances in bookstores, distribution of a 'Top 50 Reads' consumer guide, and a free book giveaway for consumers who purchase a book from a selected list of titles.

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## Box F.2 The Public and Education Lending Right schemes

### Public Lending Right (PLR) scheme

From April 2008 authors were eligible for a payment of \$1.57 per estimated copy of their books held in libraries, while publishers were eligible for 39.25 cents per estimated copy. (Prior to this payment rates were \$1.47 and 36.75 cents, respectively.) Copy estimates are derived by extrapolating from an annual survey by the ABS of books held in a sample of libraries (PLRC 2008).

Total payments to individual authors are generally small — in 2007-08 fewer than 15 per cent of the 8600 recipients received more than \$1000. The highest payment was \$108 791.58. Two other authors received more than \$50 000.

Payments to publishers follow a similar highly skewed distribution. The largest payment was \$195 054.53 while over 75 per cent of the 363 recipients received less than \$1000.

Five authors accounted for almost half of the 100 highest scoring books held in public libraries over the 34 years of the program. Children's short story writer Paul Jennings had the highest representation, with 10 titles in the top 30 (and 17 in the top 100). Nine of Bryce Courtenay's novels, mostly set in Australia or South Africa, were also in the top 30 (and 11 were in the top 100). Books by John Marsden (young adult fiction) and the mostly Australian-themed or set novels of Colleen McCullough and Di Morrissey collectively had 17 in the top 100.

Administration costs for the PLR were around \$280 000 in 2007-08, or about 3 per cent of payments.

### Education Lending Right (ELR) scheme

Like the PLR, the ELR is based on an estimate of the number of copies held in education libraries. The per copy rate declines as the number of copies increases: for the first 50 copies authors receive \$1 per copy, declining to 58.5 cents per copy for the next 450, with further reductions until copies in excess of 50 000 earn 9.3 cents. Payment rates for publishers are 25 per cent of the author rates.

In 2007-08, some \$10.5 million was paid under the ELR scheme to 10 275 writers and 383 publishers. Distribution data, along the lines published for the PLR, are not provided. Mem Fox's book, *Possum Magic*, was the highest scoring book in the ELR survey in 2007-08. Paul Jennings had the highest representation in the top 100 (with 13 titles, mostly the same titles as under the PLR).

Source: PLRC 2008.

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## F.2 Some subsidy design considerations

### Targeting cultural content

Subsidies to book producers ideally should be delivered only for books that yield material cultural and educational externalities that would not otherwise be generated. The externality value of books, and the likelihood that it would be generated without a dedicated subsidy, is likely to vary between classes or genres of books, as well as within them, and so ideally subsidies should vary to reflect these differences. At a broad level, for example:

- Children's books are potentially one of the more important sources of undersubscribed cultural externalities, raising the possibility of differential subsidy treatment relative to other books.
- Among the diversity of the adult trade sector, Australian stories, histories and biographies are examples of books which are more likely to generate cultural externalities than generic fiction or some non-fictional material such as Australian-authored computer manuals.
- In terms of education texts, general education policies are in place which, among other outcomes, realise the broader societal externalities of education. This argues against their inclusion in a scheme focussed on subsidising undersubscribed cultural externalities.

That said, the value of the cultural externality of any particular book is not readily quantifiable, and it can be difficult to differentiate (with much precision) between different books or even classes of books. This poses challenges for determining the eligibility of different books for subsidy, and the appropriate rate of subsidy.

Against this background, there is a range of subsidy models (box F.3), each with strengths and weaknesses. It would be a matter for further review to judge the most appropriate approach, recognising that any practical system will entail a compromise between different objectives and constraints, including accuracy of targeting, objectivity and administrative simplicity.

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### Box F.3 Models for determining subsidy eligibility

One model, currently used by the Literature Board for various grant categories, is for a 'panel of assessors' to evaluate grant applications against various selection criteria. When applied to the content of books, this approach should allow some alignment of subsidy entitlements with relative externality values, to the extent that the qualitative judgements of the panel mirror these externality values of different books. However, even with transparent criteria against which merit is assessed, the assessment of applications for support can be time consuming and involve some uncertainty for potential recipients, as well as being contentious. Indeed, in an overview of Literature Board grant programs over the period 1986-2000, Stevens (2004, p. 7) noted that there had been criticism from many sources:

Changes to long established funding patterns were not always appreciated; applicants challenged the validity and impartiality of decisions; some critics questioned whether a body such as the Literature Board produced a culture which could be seen as elitist; some queried what they saw as excessive emphasis on marketing and commercialisation; and a few cultural commentators accused the Literature Board of imposing a 'Big Brother' or 'Ministry of Culture' uniformity on creativity.

An alternative approach to aligning subsidies with potential differences in cultural externalities of books, that may be more suitable for a broad book subsidy scheme, would be to distinguish book content according to generally accepted bibliographic classification systems.<sup>2</sup> A potential advantage of such an approach would be some broad alignment of subsidies with relative externality value of different classes of books, without the need for panel-based assessments. A potential disadvantage (or practical challenge) is the need for a 'robust' subject classification system that distinguishes categories that may have marked differences in cultural value, and a system that cannot be manipulated by 'misleadingly coding' some titles in order to qualify for assistance.

A third approach that would avoid the need for the judgements inherent in the above models would be to include all Australian-authored books within a scheme and to pay the same rate of subsidy per book, regardless of content. The disadvantage of this approach is that it does not differentiate according to the cultural value of individual titles, or even classes of titles. But in comparison to the PIRs, it would avoid the leakage of support offshore and to the printing industry, and would spread the cost of assistance across taxpayers generally rather than book purchasers specifically.

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<sup>2</sup> Book subject classification systems in Australia are many and varied. For example, there are many individualised, ad hoc, category classifications used by retailers for in-store shelving purposes. In contrast, there are also formal, independent, detailed systems such as US Library of Congress subject headings, as used by the National Library of Australia for its CiP (Cataloguing in Publishing) service. Other formal classification systems include BIC (Book Industry Communication) codes, adopted by the Australian Publishers Association (APA) for use used in conjunction with ONIX (Online Information Exchange), the international standard for storing and sharing title information between publishers, distributors and booksellers. There are also detailed subject classification systems developed by commercial entities such as the codes used by Bowker in its Global Books in Print database.

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## Targeting dissemination

Where subsidies are provided for book ‘outputs’, another consideration is whether they should be linked to an eligible book’s publication or its sales. Cultural external benefits can arise from the discussion of a book that surrounds its release, irrespective of whether it goes on to sell in numbers. However, as discussed in chapter 6, the cultural value derived from a book is likely to be amplified the more it is read. Sales would appear to be a workable, though imperfect, proxy for readership.<sup>3</sup>

Were a sales-based subsidy to be adopted, consideration would also need to be given to whether it be based on sales value or sales volume. A key point here is that cultural externalities depend on the consumption of the content of a book rather than on the format in which the content is presented, which suggests that a volume based scheme has a targeting advantage.

## Funding, caps and eligibility restrictions

In principle, any subsidy should be funded to achieve a level of output of locally authored works where the value to the community of an additional ‘unit’ of externality generated was equal to the additional subsidy required to secure it. However, given the intrinsic difficulties in putting orders of magnitude on cultural externalities, in practice some under- or over-shooting of the necessary support is inevitable. Consideration would need to be given to whether there may be indicators that signal a material under- or over-shooting, such as significant divergences in book activity from previous sales trends, not attributable to changes in other demand and supply influences.

In Canada, expenditure under the Assistance to Publishers component of the Book Publishing Industry Development Program (box F.4) amounted to around A\$30 million in 2007-08. For illustrative purposes, if a sales-based scheme was instigated in Australia and confined to non-educational books, this quantum could fund a subsidy at the rate of around \$1.40 per sale of Australian-authored trade books, given present sales volumes.<sup>4</sup>

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<sup>3</sup> A two-part subsidy approach comprising a publication component along with a sales component would in principle have the advantage of targeting both elements of the dissemination spectrum, although a potential drawback is the additional administration costs and imprecision in aligning each part of the subsidy with the externality value.

<sup>4</sup> Total local trade sales are around 70 million units (based on Nielsen BookScan data for 2007-08), of which around 31 per cent are Australian authored (appendix E).

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#### **Box F.4 Canada's Book Publishing Industry Development Program**

Canada's Book Publishing Industry Development Program was established in 1979. The principal objective of the program 'is to ensure access to a diverse range of Canadian-authored books in Canada and abroad' and seeks to achieve this objective by 'fostering a viable Canadian book industry that publishes and markets Canadian-authored books.' (PCH 2009)

In 2007-08 funding was around CAN\$39 million (A\$45 million). About 70 per cent of the funding is for the Aid to Publishers (ATP) component, which provides a sales based subsidy to about 200 publishers, mostly for Canadian-authored trade, educational and scholarly books, printed in Canada.

The ATP operates on the basis of pre-set eligibility rules, for example small publishers and large, profitable publishers are excluded and publishers must be at least 75 per cent Canadian owned and controlled. Claims are submitted by publishers.

Capped program funding is pro-rated by the administrator among eligible publishers in proportion to eligible sales. The maximum publisher payment is \$850 000. Administration costs are about A\$1 million, or about 3 per cent of assistance provided (OCAEE 2008, p. 34).

Other program elements address such aspects as publishing technology, business planning and exports. Funding for these is based on merit assessed applications. Administration costs for these programs total about 5 per cent of assistance provided.

For any subsidy scheme, consideration needs to be given to whether to have an 'open ended' scheme or to cap program funding. Both designs are used in Australia for industry assistance programs — for example, the R&D tax concession is open-ended, whereas the Export Market Development Grants scheme and Automotive Competitiveness and Investment Scheme are capped.

With a pre-set subsidy rate and eligibility rules, demand for the scheme may exceed available funding. The most precise way of staying within a cap is to pro-rata all eligible claims equally — as occurs under the Canadian book subsidy scheme.

#### **Other design matters**

*Recipients: publishers or authors?*

In considering whether Australian publishers or authors should be the recipients of a books subsidy, neither option has clear advantages in terms of likely effects on the realisation of cultural externalities. In general, the 'sharing' of a tax or subsidy between buyer and seller will tend to be the same regardless of the incidence in the

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production chain (output or sale). Although publishers are typically seen as having the upper hand in dealing with authors, especially those without a market presence, there is still considerable ‘competition for talent’. Thus, if publishers were to receive the subsidy, some of it would presumably be passed through to authors in the form of advances, royalties or a preparedness of publishers to take on marginally riskier projects than they otherwise would. Similarly, if authors received the subsidy, many would presumably have to share their payments with a publisher to secure a publication contract.

However, in considering to whom the subsidy should be paid, comparative administration and compliance costs are also relevant. In this respect, a potentially decisive consideration is that routing payments through larger publishers would allow for the aggregation of subsidy claims in respect of individual titles.

#### *Data sources and payment administration*

In considering the feasibility of a financial support scheme, the availability of data and audit implications are relevant.

Data relating to book sales are generated as part of everyday commercial activities — for example, recording business accounts, preparing GST remittances, royalty statements and lodging personal income tax. Most major bookstores have electronic point of sale (POS) systems which enable them to track their sales and stocks and to reorder books, with distributors using bar codes in their warehouse systems. And BookScan aggregates transactions across entities, providing a major commercial sales database for trade books in Australia with data on actual sales prices and volumes.

However, no single data source provides a *universal* ready-made list of Australian authors and sales of books by standardised category.

Administration costs are likely to differ according to whether entitlements are based on merit assessment of application or pre-set eligibility rules and whether claims and payments are targeted at publishers or authors.

- The Canadian scheme relies on publishers submitting their own claims, based on pre-set eligibility rules. The role of the administrator then is to perform any necessary arithmetic checks or adjustments to claims before processing payment, and to maintain an appropriate audit strategy. The administration costs for the ATP component of the Canadian scheme, are about A\$1 million, to deliver about A\$30 million in payments — or around 3 per cent of the support provided. (The other components of the Canadian scheme are based on merit application and

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assessment and the administration costs are proportionately higher, at around 6 per cent of support provided).

- Similarly, the administration costs ratio for the Public Lending Right scheme, based upon pre-set eligibility rules, are noticeably lower than the operating costs of the Australia Council, which has a significant merit assessment process — approximately 3 percent and 10 per cent respectively.

Irrespective of the specific arrangements selected for the administration of a subsidy scheme, the costs of such administration would be modest relative to the costs of PIRs: indicative Commission estimates suggest that the equivalent figure for delivering assistance to copyright holders for Australian-authored trade books under the PIRs is at least 60 per cent, due mainly to the substantial leakage of assistance to foreign copyright holders that they entail (appendix E).



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