

# **Allen and Unwin Book Publishers**

## **Supplementary Submission to the Productivity Commission**

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

Allen & Unwin is Australia's largest independent Australian owned publisher. We publish between 225 and 250 local titles each year and have annual turnover of between \$60 and \$70 million. For Allen & Unwin the draft recommendations proposed by the Productivity Commission will lead to a reduction in the company's annual sales revenues, a reduction in the number of staff employed, the publishing of fewer Australian books each year, the publishing of fewer high risk books, the payment of lower advances to Australian authors and the printing of fewer books with Australian printers.

All of these consequences will flow from the Commission's draft recommendations. The Commission's recommendations will cause significant harm to the Australian book industry without providing any certainty that the predicted benefits will accrue from the recommendations.

Worryingly, the Commission has reached its conclusions without the support of extensive data but instead has mixed theoretical assumptions with inaccurate observations to support its view.

The paucity of accurate data provided by the Commission renders its recommendations invalid. Australian authors, consumers, booksellers, printers and publishers will all be greatly diminished by the proposed changes. Put bluntly, the Commission has got it wrong.

### **Accuracy of the Commission's Analysis and Recommendations**

#### ***Backlist Prices are Not Higher***

The Commission has based its recommendations on the incorrect view that backlist prices are higher for consumers in Australian bookstores.

In making this observation the Commission does not make clear whether it is referring to the publisher's wholesale price, the publisher's recommended retail price or the bookstore's selling price. As well the Commission does not make clear what reference point it has compared backlist prices to that leads to the conclusion they are higher.

However by virtue of the fact that the Commission states that backlist 'prices are often higher as competition, especially from discount department stores, is limited'<sup>1</sup> then one must assume it is referring to the bookstore's selling price.

Further the Commission notes that 'most of the costs (of these higher prices) are met by consumers.'<sup>2</sup> So in its view backlist prices are higher for consumers.

The Commission presents no evidence at all to support this view. However the table below shows the price paid by consumers for backlist books in Australia is lower than the price paid for frontlist books in every single year for the last six calendar years.

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<sup>1</sup> *Restrictions on the Parallel Importation of Books*, Productivity Commission Discussion Draft, March 2009, p.xv

<sup>2</sup> *Restrictions on the Parallel Importation of Books*, Productivity Commission Discussion Draft, March 2009, p.xiv

## Australia – Total Market

ASP	2003	2004	2005	2006	2007	2008
Frontlist	\$21.42	\$20.55	\$21.68	\$20.87	\$21.38	\$20.78
Backlist	\$18.87	\$19.03	\$18.29	\$18.84	\$18.27	\$18.45

Source: Nielsen Bookscan Total Market 2003-2008

This data shows that backlist prices are lower than frontlist prices in Australia. However the Commission's recommendation to limit territorial copyright to 12 months stems from their view that after 12 months from publication the 'price-raising impacts of the PIRs'<sup>3</sup> are likely to be highest. The above data clearly shows that in practice this is not the case. Therefore the Commission cannot proceed with this recommendation based, as it is, on an incorrect reading of how the market operates.

### ***Income Leakage Will Increase***

The Commission's view of the benefits and costs of the existing territorial copyright arrangements concludes that the key costs are income leakage to overseas authors and publishers and possible resource inefficiencies.

The Commission places great store on these costs and comments that 'in the absence of significant externalities .... the leakage of income overseas and resource inefficiencies associated with the PIRs would provide a persuasive case for their outright abolition.'<sup>4</sup>

What the Commission fails to note however is through its 12 month recommendation income leakage to overseas authors, wholesalers and publishers will actually increase as Australian booksellers largely utilise alternative sources of supply.

Similarly its view of resource inefficiencies is rendered invalid by the fact that it quotes no supporting data from the book industry for holding this view. Rather it notes that 'there is much evidence from other sectors that government interventions that artificially boost returns to particular activities usually lead to less efficient resource use across the economy.'<sup>5</sup>

## **Has the Commission Captured the Full Scope of Relevant Arguments?**

### ***Backlist has Been Misunderstood***

The Commission's recommendation to remove territorial copyright after 12 months displays a misunderstanding of the importance of backlist sales to both authors and publishers.

Allen & Unwin's backlist sales represent 40% of its annual revenues. As the Commission has been advised many books are unsuccessful. Therefore the ability to create successful books that generate backlist sales over more than one year is vital to both authors' and publishers' success.

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<sup>3</sup> *Restrictions on the Parallel Importation of Books*, Productivity Commission Discussion Draft, March 2009, p.xxiv

<sup>4</sup> *Restrictions on the Parallel Importation of Books*, Productivity Commission Discussion Draft, March 2009, p.xxi

<sup>5</sup> *Restrictions on the Parallel Importation of Books*, Productivity Commission Discussion Draft, March 2009, p.xxi

Allen & Unwin publishes numerous books (eg. children's books; tertiary textbooks; academic monographs; 'issues' books) that require a period longer than 12 months to recover their initial investment. The reduction of territorial copyright to 12 months would jeopardise the publication of these books whilst penalising successful books that continue to sell.

The Commission's 12 month recommendation seems to be informed by the incorrect view that the first 12 months 'is generally the peak sales period'<sup>6</sup> for a book. No data is presented to support this view but rather the Commission comments that 'many participants advised ... that, for the majority of trade titles, the bulk of sales occur in the year after publication.'<sup>7</sup> It is unfortunate that this view, which applies only to a limited amount of commercial fiction, has been taken to be accurate for the entire industry's output.

### ***International Copyright Protection Has Been Ignored***

The recommendations place no weight on the fact that the major international publishing markets of the US and UK retain territorial copyright on all their works. That these markets value territorial copyright, and believe that it provides a benefit to the country is clear. What is not clear, and not addressed in the Discussion Draft, are the reasons why the Commission feels differently about the Australian experience.

### ***Export and Rights Sales Have Been Deemed Irrelevant***

Export sales of Australian books total over \$200 million annually. On top of this Australian authors and publishers sell rights to their works to every book market around the world. By suggesting that Australian works could be held back from export or sale in foreign markets to 'extend the effective period of protection from parallel imports',<sup>8</sup> the Commission is ignoring this success and instead recommending actions that would threaten much of this activity.

The Commission's view that works could be held back from export or sale in foreign markets demonstrates a complete lack of understanding of how foreign markets operate. In effect, the Commission demonstrates a belief that export or rights sales of Australian books should be discouraged as a way of offsetting some of the harmful effects of the Commission's recommendations.

### **What Effects Would Ensur From the Commission's Proposed Reforms?**

The most obvious effects of the Commission's recommendations have already been outlined – Allen & Unwin's sales, staffing levels and publishing output would be reduced whilst its publishing mix would need to be altered.

Various unintended consequences have already been highlighted by industry participants. The most likely of these seem to be that an increase in frontlist prices will occur as publishers seek to recover their investment in the first 12 months.

As well many have suggested that backlist ranges available from publishers will shrink as publishers reduce their investment in backlist stock that has no territorial copyright support. This would lead to a reduced diversity of backlist being available in bookstores as well as a higher

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<sup>6</sup> *Restrictions on the Parallel Importation of Books*, Productivity Commission Discussion Draft, March 2009, p.xxiv

<sup>7</sup> *Restrictions on the Parallel Importation of Books*, Productivity Commission Discussion Draft, March 2009, p.2.5

<sup>8</sup> *Restrictions on the Parallel Importation of Books*, Productivity Commission Discussion Draft, March 2009, p.xxiv

selling price for backlist since bookstores would need to purchase the stock on firm sale terms from international suppliers.

All these outcomes are negative for consumers and yet are entirely likely to flow from the disturbance to the industry caused by the proposed reforms

### **Summary**

The Productivity Commission's Discussion Draft points out that 'what matters ultimately is the wellbeing of the community as a whole.'<sup>9</sup> This aim has been compromised however by recommendations that diminish the industry in many ways without being supported by solid evidence.

The criteria by which the Commission has judged and weighted various arguments is not detailed in the Discussion Draft. The evidence underpinning its key argument that backlist prices are higher has been shown to be not evidence at all, but rather based on an inaccurate observation of how the industry operates.

Overall the Commission is sanguine about the impact of its recommendations. But in making its judgement it has misunderstood or overlooked many aspects of the industry. It is hard to understand why the Commission cannot see that its recommendations will harm both the book industry and the community more generally.

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<sup>9</sup> *Restrictions on the Parallel Importation of Books*, Productivity Commission Discussion Draft, March 2009, p.xviii