



Australian Government
Productivity Commission

Restrictions on the Parallel Importation of Books

Productivity Commission
Discussion Draft

March 2009

This is a discussion draft
prepared for further public
consultation and input.

The Commission will finalise
its report after these processes
have taken place.

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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) or by contacting Media and Publications on (03) 9653 2244 or email: maps@pc.gov.au.

Opportunity for further comment

You are invited to examine this Discussion Draft and make written submissions to the Productivity Commission by no later than **Friday, 17 April 2009**. However, in view of the tight timeframe for the study, the Commission encourages participants to lodge their submissions as soon as reasonably practicable.

The final report will be prepared after submissions have been received and delivered to the Australian Government on 13 May 2009.

Roundtables

The Commission will hold roundtables on this Discussion Draft. Roundtables provide an opportunity for people to present their views on the draft to the Commission in a less formal environment.

Location	Date
Melbourne	7 April 2009
Sydney	8 April 2009

Commissioners

For the purposes of this study and Discussion Draft, in accordance with section 40 of the *Productivity Commission Act 1998*, the powers of the Productivity Commission have been exercised by:

Mike Woods	Presiding Commissioner
Louise Sylvan	Commissioner

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.

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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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
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
PIR	Parallel Import Restriction
PC	Productivity Commission
PIAA	Printing Industry Association of Australia

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
VAT	Value Added Tax

Glossary

Australian edition	A version of a book produced under licence by an Australian publisher.
Back list	Titles in print that have typically been on the market for 12 months or more and which are now generally sold in low volumes.
Current list	Front and back list titles currently in print; not remainders or out-of-print titles.
Educational book	A book written, published and prescribed or recommended for a primary, secondary or tertiary education course; or a professional or reference text.
Foreign edition	A version of a book produced under licence by an overseas publisher.
Format	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.
Front list	Titles with relatively strong sales, which have usually been on the market for less than 12 months.
Literary work	An author's written material within a book that is protected by copyright.
Parallel importation	Importation of a book legitimately supplied overseas, for which there is an authorised locally published version.
Recommended retail price	The price for which a publisher recommends that a book be sold, which is sometimes printed on the cover.
Remainders	Books that are dramatically reduced in price by publishers to liquidate stock.

Royalty	Payment by a publisher to an author for the use of his or her literary work.
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.

OVERVIEW

Key points

- The Commission has been asked to assess the benefits and costs of Parallel Import Restrictions (PIRs) on the importation of books that are published in Australia, and to examine the merits of options for reform.
 - The PIRs are contained within the Copyright Act, although they are additional to its core protections.
- Changes to the PIRs in 1991 have overcome previous concerns about the timely availability of books in Australia.
- PIRs, by restricting competition, place upwards pressure on book prices in parts of the market:
 - most of the benefits of these higher prices accrue to publishers and authors, with demand for local printing also increased
 - most of the costs are met by consumers.
- While these benefits and costs are largely offsetting, there are some resource costs for Australia, including a leakage of income to overseas authors and publishers.
- At the same time, the PIRs help to support the ‘cultural externalities’ associated with Australian publishing. These are assessed as policy relevant, but unlikely to be large.
- An explicit subsidy to support the cultural externalities would avoid a leakage of support overseas, but the approach would have practical drawbacks.
- Abolition of the PIRs and reliance on consumer demand for Australian stories to deliver a sufficient level of local writing and publishing activity, while having some merit, would not be prudent at this time.
- Changes should be made to the current PIR regime to increase competition in those parts of the market where the restrictions put most upward pressure on book prices and/or where the cultural externalities are likely to be smallest. To this end:
 - PIR protection should only apply for 12 months from the date of first publication of a book in Australia (while retaining the 30 day release rule)
 - the 7/90 day resupply rule should be abolished
 - booksellers should be allowed to overtly offer an aggregation service for individual import orders under the single use provisions.
- A further review should be held five years after implementation of the changes arising from this study.

Overview

Australians are avid readers of books. New books 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 earning or learning, repositories of history or even markers of cultural identity. Reading books also improves literacy, which is fundamental to individual wellbeing and to the smooth functioning of society and the economy.

This study examines the various effects of the Copyright Act's current restrictions on parallel imports of books published in Australia, and assesses whether these restrictions should be retained, modified or repealed.

A skim of the books sector

The books market displays considerable diversity. 'Trade' books, which account for around three-fifths (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 two fifths of sales comprise educational, professional and reference texts.

Trade books are sold through a variety of channels. Competition is most robust on 'front list' titles, with many discount department stores frequently selling bestsellers for substantially less than the recommended retail price. This puts pricing pressure on the retail book chains, while independent bookstores compete more on levels of customer service. On 'back list' titles, prices are often higher as competition, especially from discount department stores, is limited. In recent times, an increasing number of Australians have been bypassing local 'bricks and mortar' bookshops and purchasing online, including from foreign online booksellers such as Amazon. Consumers can also access books from libraries, friends and family or purchase them second-hand.

Educational books are often purchased from specialist suppliers. Whereas consumers have discretion over which trade books they read, textbooks are typically prescribed, which makes them more susceptible to monopolistic pricing practices by publishers.

Australian publishing has flourished over recent decades, albeit from a small base. Although comprehensive and up-to-date data on the industry is not readily available (box 1), the Commission estimates that around 45 per cent (by value) of trade books sold in Australia are locally published, with 40 per cent of the top 5000 trade books being Australian-authored. 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 are also printed here. There are two main plants: one in Adelaide and the other in regional Victoria. These produce predominantly monochrome paperbacks; most colour printing is sourced off-shore.

Box 1 The data challenge

The Commission has found that there are insufficient data to fully describe and analyse the books market. The ABS last surveyed the publishing sector in 2003-04. There is particularly a dearth of data in relation to the educational and professional books sector, and international online sales.

Further, terms are often used loosely — for instance, sometimes it is implied that ‘Australian published works’ or ‘new Australian titles’ refer only to Australian-authored works, but these categories also include foreign authored works. Also, books said to be ‘produced’ in Australia may be printed locally or off-shore.

The mechanics of the 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.

In addition to its core copyright protections, the Act contains what are known as Parallel Import Restrictions, or ‘PIRs’. Broadly, under the PIRs, publishers and/or authors who hold the Australian rights to a title are largely protected from competition from foreign editions of that title. So, for example, if a particular textbook or a particular novel is published in Australia, booksellers cannot import and sell stocks of the same textbook or novel from, say, Asia or the United States (US).

Subject to some limited constraints (see below), these provisions effectively bestow copyright holders with territorial monopolies on their titles, thereby segmenting the international book market. The rights holders can charge different prices or royalties in the Australian market with the certainty that the prices Australian consumers pay for their books cannot be undercut by commercial quantities of imports of the same titles.

Assistance from Australia's PIRs is not limited to local publishers and authors. The publishers can be Australian businesses, Australian arms of international companies or international companies operating from other countries. Likewise, the authors whose works are protected from parallel imports can be Australians or foreigners.

For a title to qualify for protection under the PIRs, the Australian 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 customer order.

A number of other countries, including the United Kingdom (UK) and the US, also have PIRs, although without time requirements for first publication. New Zealand, on the other hand, is an unrestricted market (although, interestingly, it operates in practice largely as part of a collective 'ANZ' market).

The debate about the restrictions

Some booksellers argue that the PIRs prevent them from importing cheaper, or otherwise better value-for-money, editions of books and passing those savings on to consumers. In simplified form, they contend that cheaper books improve consumer welfare and may also increase the sale of books, encourage more reading and improve literacy.

Australian publishers, authors and printers argue that the restrictions give the Australian rights holder certainty of protection from imports of their titles. Again in simplified form, the contention is that this gives local publishers a viable business model, and helps them to nurture Australian authors (through providing royalty advances, editing, promotion and marketing, funding to attend literary festivals, etc.) and to contract to Australian printers. If the restrictions were removed, they contend that a number of mainly smaller, local publishers and at least one major local printer would go out of business, and that there would be fewer Australian authors published and less Australian culture on the bookshelves.

Many booksellers place great store on their reliance on Australian publishers for their ability to provide timely release and frequent, low volume resupply. Importantly, a number of booksellers value highly the publishers' provision of stocks on a 'sale or return' basis.

The study's scope and approach

The actual story is much more complex and the likely behaviour of market participants in the face of change is uncertain. This study by the Commission attempts to separate the various threads of argument and come to a judgement which balances the key impacts involved.

The terms of reference (set out at the front of this Discussion Draft) 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.

In making such assessments, the Commission interprets 'benefits' and 'costs' in their fullest sense — that is, covering the values of social and cultural 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.

In preparing this Discussion Draft, the Commission consulted as widely as possible within the tight timeframe provided for the study. It held discussions with more than 30 industry stakeholders and government bodies, and received more than 270 submissions. It will convene workshops and invite further submissions on this draft, before presenting its final report to Australian Government in May.

Assessing the benefits and costs

Conceptually, PIRs are similar to other import restrictions in that they cushion or shield local producers from foreign competition. Import restrictions are often of benefit to the protected domestic industry and to the industries that supply it. However, experience in other sectors has shown that import restrictions typically also adversely affect consumers through the availability, quality and prices of the goods or services concerned, and 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. However, by providing publishers with the certainty that titles published in Australia will not be undercut by imported editions, the PIRs do have the potential to affect book prices.

Price impacts

Measuring the magnitude of any actual price effects caused by Australia's PIRs is problematic. Indeed, the Commission has had to draw mainly on qualitative evidence together with theory, as well as some quantitative evidence, to gauge these effects and has not put a figure on them.

Many previous studies have sought to measure the price impacts of PIRs by comparing book prices in Australia with the price of the same titles in the UK and US. Several study participants submitted similar comparisons, and the Commission undertook its own exploratory exercise.

While the comparisons reveal no clear pattern, they suggest at a minimum that, in the absence of PIRs, opportunities would arise for Australian booksellers to 'cherry pick' cheaper or better value editions of books from the UK and US. Predictably, the strength of the Australian dollar has a major influence on measured price differences at any point in time.

However, the Commission cautions that price comparisons of this type are unable to provide a robust indication of the effects of PIRs on book prices in Australia. Prices in the UK and US markets are themselves inflated by restrictions on parallel book imports, and different sources of imported books might emerge in the absence of the PIRs in Australia.

In this context, some study participants suggested that low cost wholesalers might well establish in Asia to meet the requirements of the Australian market. This could put downward pressure on book prices in certain sections of the Australian market. In the educational books sector, English-language textbooks in Asia concurrently sell for less than half the price of Australian editions. Likewise, opportunities to import remainders from abroad could greatly increase price competition for parts of the trade back-list — remainders are often available for a minor fraction of a title's normal price (although it is relevant to note that authors receive little or no royalty from them).

More generally, the actual or potential overseas competition consequent on the removal of the PIRs would increase the imperative for parts of the local industry to improve their efficiency. A number of study participants identified distribution, in particular, as having scope for productivity improvements.

Global internet booksellers already provide some competitive discipline on Australian book prices, and developments such as growth in the use of e-books and digital texts may reduce the potential for the PIRs to raise prices in the future.

However, drawing on the various strands of evidence available to it, the Commission judges that Australia's PIRs put upward pressure on prices in at least some segments of the book market. (Importantly, were the PIRs to not translate to higher prices received by publishers, they would have little substantive effect, whether for good or bad, on consumers, the book sector and the community more broadly.)

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

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

- By increasing the monetary returns available from rights trading and local publishing activity, the PIRs enable higher output of locally published titles, resulting in the publication of a greater number of authors and greater demand for the services of the local printing industry.
- In lessening potential import competition, they reduce the risks for local publishers and authors of investing resources in the creation and production of books. Amongst other things, this may enable publishers to invest more heavily in developing and promoting new authors without increasing their overall risk exposure, and to offer stock to booksellers on a 'sale or return' basis.

The higher prices for publishers that underpin these industry benefits are paid for, in the first instance, by booksellers, and ultimately affect 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 impacts

Many of the benefits and costs are offsetting, and represent a transfer of resources from consumers and people in other industries to book producers. As such, they do not constitute a net benefit or net cost to the Australian economy, but do have distributional implications.

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.

On the credit side, by supporting a larger publishing industry and, as a consequence, more Australian authorship, there is a greater portrayal of Australian events, as well

as stories as seen through Australian eyes. The dissemination of Australian culture can have a range of social and educational benefits.

Most of the cultural benefits are likely reflected in the prices people are prepared to pay for books and the sort of books that they purchase — consumers typically do not choose books unaware that they potentially embody cultural value or may be culturally enriching to read. However, in the Commission’s view, the cultural value of books may be greater than the market value that is reflected in individual consumers’ book buying decisions. In economic parlance, this component of cultural value represents a positive ‘externality’. Although difficult to quantify, cultural externalities constitute a non-market benefit to the community that is currently derived from the PIRs (although PIRs are only one means of securing such benefits).

On the debit side, the PIRs involve a leakage of income to those overseas authors and publishers whose works are released in Australia and benefit from the PIRs. As noted earlier, the protections provided by the PIRs are not restricted only to Australian authored works. Based on an examination of the top 5000 trade titles sold in Australia in 2007-08, the Commission estimates that for every dollar of assistance that the PIRs provide to local authors and publishers, a broadly similar amount will flow directly overseas.

A further debit of the PIRs is that, in lessening the need for the local books industry to operate at ‘best practice’, there may be inflated cost structures and inefficiencies in parts of the supply chain. PIRs are also likely to have attracted resources into the books sector that may have produced 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 across the economy.

Assessing the policy options

In view of the benefit-cost balance sheet set out above, the case for the longer term retention of PIRs — in either their current or modified form — must be founded principally on the cultural externalities they generate for the community. In the absence of significant externalities, and with core copyright protection still in place to provide incentives for creative endeavour *per se*, the leakage of income overseas and resource inefficiencies associated with the PIRs would provide a persuasive case for their outright abolition. In these circumstances, a concern to avoid disruptive adjustment in the local books industry would still militate against precipitate removal of the PIRs. However, the support that the PIRs provide to

output and activity in the industry is not of itself a reason to maintain the restrictions in perpetuity.

Even if the PIRs were judged to provide a net benefit to the community in the light of the cultural externalities that they support, the case for retaining the PIRs would still depend on there being no alternative policy instrument that could more efficiently support culturally valuable Australian writing activity, and thereby secure these externalities.

At the same time, it needs to be recognised that making such assessments is not easy. As noted, up-to-date and comprehensive data on the books sector is not readily available, and gauging some of the impacts of the PIRs — for example, in terms of prices, industry activity and cultural externalities — is inherently difficult. Many participants in this study from different parts of the books sector were themselves quite unsure about how changes would affect them. These information gaps and uncertainties suggest the need for a cautious approach to reform in this area.

With these considerations in mind, the Commission has explored an array of policy options, ranging from retention of the PIRs in their current form through to abolition of the restrictions with reliance on market forces to adequately address the community's cultural needs in this area.

The status quo

In the Commission's view, the PIRs are not a particularly effective or efficient instrument for targeting cultural externalities. This is because the support they provide to writing and publishing activity is not differentiated according to the cultural significance of the output concerned, and much of it is dispersed on foreign works. Further, some aspects of the current arrangements — such as the '90-day resupply rule' — have already been largely rendered redundant by changes in transport and technology.

Given the upward pressure on book prices that ensue from the PIRs, and their associated resource use inefficiencies, the Commission considers that it would not be appropriate to retain the restrictions in their current form.

Repealing the PIRs

Some of the arguments for abolishing the PIRs are strong. In particular, the cultural externalities that the restrictions support do not appear to be large, and there already exist government funding programs directed at them.

However, immediate abolition could have material adjustment costs. Further, were it subsequently judged that the ensuing contraction in industry activity, and any associated loss of cultural externalities, had been excessive, it could take a considerable time to reverse.

In the light of these considerations and the more general uncertainty about the benefits and costs of the PIRs, abolition of the restrictions at this juncture would not, in the Commission's view, be prudent.

Replacing the PIRs with a subsidy for Australian works

In assessing the case for abolishing the PIRs, the Commission explored — but at this stage has ruled out — the option of explicit taxpayer subsidies to replace the assistance that the PIRs, by implicitly taxing book consumers, currently provide for Australian works. A subsidy could notionally better target the cultural externality and would have other advantages. However, the Commission found that, in this instance, there are issues involved in designing an administratively simple scheme that could still be tailored to reflect the different cultural value embodied in different genres and authorships of books. Problems would also arise in determining the quantum of the subsidy. And introducing a new subsidy scheme might validate ongoing support to address cultural externalities — beyond the level of support provided by existing funding programs — that in the Commission's view may ultimately prove unnecessary.

Reform within the existing framework

The Commission sees considerable scope for reforms within the existing policy framework to reduce the adverse effects of the current PIR regime on the community while preserving support for Australian writing, in recognition of the cultural externalities it generates. This approach to reform would avoid many of the uncertainties inherent in the immediate abolition of the PIRs or a shift to supporting cultural externalities through direct subsidies.

The Commission's approach is to focus on those parts of the book market where the upward pressure on prices from the current PIRs is ostensibly the highest and/or the likely cultural externalities are smallest, namely:

- the back list component of the trade books (which, unlike selected titles on the front list, is not, overall, subject to the competitive pricing pressure from discount department stores)
- the market for educational books (where price pressure is limited and, for some subject areas, cultural externalities are not apparent).

The Commission examined a range of options that, either alone or in conjunction with other measures, might generate further competitive pressure in these areas. These included removal of PIR protection on educational books only, the removal of PIR protection for books authored by foreigners, and the introduction of price-caps, as suggested by some participants. However, it ruled these out on various grounds including that they would be ineffective, overly cumbersome, or would run foul of international treaties to which Australia is a party.

The Commission has, however, formulated a package of amendments to the existing provisions of the PIR regime which aim to introduce greater competitive pressures into the broader book market while preserving a defined period of certainty for local publishing, authorship, retailing and printing.

Length of protection

The Commission proposes 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.

In the Commission's view, limiting the period of PIR protection to one year would continue to provide local publishers with the certainty to invest in the development of new manuscripts knowing that this investment, and that entailed in marketing and promotion, would not be undermined by parallel imports during what is generally the peak sales period. In so doing, it would preserve incentives for the generation of culturally valuable local works.

This period of protection would coincide with the time when price competition in the trade books market is at its highest and hence when the price-raising impacts of the PIRs are likely to be lowest. Further, while this change would ensure that foreign-authored works were not PIR-protected beyond 12 months, the Commission notes that publishers of Australian-authored works would have the option of extending the effective period of protection from parallel imports by holding back release in foreign markets.

Qualifying for protection

Similar to current arrangements, to be eligible for protection in the first 12 months, commercial quantities of an Australian published edition would have to be made available within 30 days of the date of first publication overseas. However, if it subsequently became unavailable in Australia during the initial 12 month period, the Commission is recommending that parallel importation would be freely

permitted until local supply was re-established. The ‘90 day resupply rule’ would therefore be obsolete.

Single use provisions

The Commission is also proposing that booksellers be allowed to overtly offer an aggregation service for individual import orders under the ‘single use’ provisions. At present, booksellers can import single copies of books that would otherwise be PIR-protected, in response to customer requests, but whether they can aggregate such orders is unclear. In practice, few do.

In the Commission’s view, its aggregation proposal would bring additional and desirable competitive pressures to bear in some key parts of the market. In essence, by reducing unit freight costs, aggregation would increase the attractiveness of the single use provisions as a means of acquiring books. It could be of particular benefit to students, with teachers and lecturers able to order text books on their collective behalf and thereby take advantage of opportunities to purchase cheaper or otherwise better value-for-money overseas editions. Greater scope for consumers to use the single use provisions may marginally increase the competitive pressure on local publishers, leading to further price benefits for consumers.

Further review

While the proposed reforms would open aspects of the books market to greater competitive pressure, the Commission does not necessarily see the proposed PIR regime as being the end point of the progressive opening of the book market. In the Commission’s estimation, the loss of cultural externalities that would result from repealing the PIRs may be quite limited, implying that there could be net benefits to Australia from this course of action. The Commission is not recommending full abolition at this stage in part because of uncertainty about the size of the impacts and the responses of market participants to such reforms. However, an ancillary benefit of the proposed changes is that the ensuing outcomes should shed light on the likely benefits and costs of further liberalisation of the market at a later date.

Accordingly, the Commission proposes that the outcomes of the new arrangements be reviewed five years after their implementation. The essential questions at that point would be: whether the reforms ensuing from this study have sufficiently reduced the cost to the consumers of the PIRs in light of the cultural externalities associated with books; whether any important sources of cultural externalities could be identified that would be put at undue risk by further liberalisation; and, if so, whether an alternative, such as some form of subsidy, would be a more effective

and efficient means of catering for those externalities. In considering these issues, the review would also need to consider the effects of technological and market developments over the next five years on the makeup of the books industry and the effectiveness and efficiency of the PIRs. To assist that review, the Australian Bureau of Statistics should, as soon as possible, revise and update its 2003-04 survey on the publishing sector, and update it again prior to the commencement of the review.

Draft recommendations

DRAFT RECOMMENDATION 7.1

Australia's Parallel Import Restrictions (PIRs) for books should be modified as follows.

- *PIRs should apply for 12 months from the date of first publication of a book in Australia. Thereafter, parallel importation should be freely permitted.*
- *If a PIR-protected book becomes unavailable during this 12 month period, then parallel importation should be freely permitted until local supply is re-established, or the expiry of the 12 month period allows for generalised parallel importation.*
- *Booksellers should be allowed to overtly offer an aggregation service for individual orders of imported books under the single use provisions.*

All other aspects of the current PIR arrangements should continue unchanged, including the 30 day rule.

DRAFT RECOMMENDATION 7.2

The new arrangements should be reviewed five years after implementation. To assist that review, the Australian Bureau of Statistics should, as soon as possible, undertake a revised version of its 2003-04 survey 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 this revised survey prior to the commencement of the review.

CHAPTERS

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 can also contain parallel importing provisions that restrict foreign editions¹ 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 have 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 1998 and 2001 respectively, the restrictions on parallel imports of books have been retained, albeit with some amendments. These took the form of the ‘30 day release rule’ and ‘90 day resupply rule’, which were introduced in 1991 to improve the timeliness and availability of titles on the Australian market. However, an attempt in 2001 by the (then) government to repeal the PIRs, in full, was blocked in the Senate.

Some elements of the books sector appear to have thrived during this period. In particular, Australian publishing output has grown markedly over the last two decades, and more Australian authors have found market recognition, both at home and abroad.

¹ 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.

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 UK/ 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, books 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 recommend that the laws be repealed.

In 2000, the Intellectual Property and Competition Review Committee (Ergas Review) 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), Senate (2001)

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 growth in internet usage and the associated rise of online book retailers. Now, with a mouse click, Australian consumers can effectively parallel import books themselves, as soon as they are released anywhere in the world, taking 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. However, these developments are still in their infancy so their full ramifications are presently unclear.

1.2 The reference and the 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 Discussion Draft.

In essence, the Commission is 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*, can be seen as being additional to, and separable from, the core copyright protections for authors, publishers and other ‘creators’ contained in the Act. In this context, it should be recognised that although Australia has ratified some international treaties² that require signatories to provide a range of copyright protections, those treaties do not oblige signatories to restrict the parallel importation of copyright material.

² 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*.

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.³

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 time 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 meetings.)
- 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.

To date, the Commission has received around 270 submissions, which 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, not least the many authors who made eloquent submissions. 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, although many have offered variations on a limited set of arguments. As noted in the Issues Paper, the Commission needs to assess any argument on its merits, rather than on the frequency with which it is put.

Following the release of this Discussion Draft, the Commission will convene a series of roundtables to elicit feedback. It also invites further written submissions. Details are provided at the front of this document. The Commission’s final report is to be delivered to the Government in May 2009.

³ In doing so, the Commission took account of the views of Zephyr Music (sub. 64), which presented arguments as to why PIRs, and exemptions from those restrictions such as the 30 and 90 day rules, should apply equally to musical works in book form as to literary works in book form. This matter is discussed further in appendix B.

1.4 The Commission's approach

While the terms of reference have several facets, the Commission's overarching task is to determine whether the current PIRs should be retained, modified or repealed. In doing so, the Commission needs to examine:

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

This 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 will vary across the components of the books sector and the community generally. For some groups, including many authors, publishers and printers, the PIRs will 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 potentially highly pertinent aspect of the Government's 'overall policy framework'.

There are thus many impacts and many policies that are potentially relevant to the study. The challenge is to place the impacts 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.

Guide to the analysis

After providing an overview of the books sector (chapter 2), the Commission in chapter 3 describes the mechanics and objectives of the Copyright Act, and the PIRs it contains. The chapter also surveys other government policies and measures that are germane to this study, including competition and industry policies as well as those pertaining to literature and reading.

The Commission investigates the benefits and costs of the PIRs, as they are currently configured, in chapters 4 to 6. It starts by examining the nature and extent of support to the books sector provided by the restrictions. This includes an assessment of the effects of the restrictions on book prices in Australia. From this starting point, chapter 5 explores the impacts of the restrictions on the individual parties in the sector and on the economy more broadly. Chapter 6 then explores the cultural and related benefits of the PIRs.

In Chapter 7, the Commission compares the PIRs, as currently configured, with a range of alternatives. In doing so, the Commission has examined the net benefits of different options having regard to a range of matters, including how effectively they would target the relevant cultural and other community benefits of books, and the costs they would impose on consumers and the economy.

A range of supplementary information and analysis is presented in appendixes. Reflecting the tight time frame provided for this study, appendixes C to E are not included in this Discussion Draft but will be published on the Commission's website shortly after this document is released. All appendixes will be published in the Final Report.

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.
 - For most trade books, the bulk of sales are made in the period immediately after publication. The majority of back list titles are sold in very small volumes.
- Most Australians read regularly and for various reasons. Hence, their book purchasing decisions are influenced by a range of factors additional to 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 best 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 40 per cent (by value) of sales of the top 5000 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, front list titles. Most colour printing is undertaken overseas.

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; data purchased by the Commission from the AC Nielsen BookScan database; information submitted by participants, including the preliminary results of a 2007 survey of the publishing industry provided by the Australian Publishers Association; and some other 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 books; and trade books.

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.

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). In contrast to educational texts, trade books are generally considered to

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, as far as the Commission is aware, there is no single data source for the size of the books market. And the ABS last surveyed the sector in 2003-04.

To supplement the somewhat limited and now dated ABS information, the Commission purchased a variety of data from the AC Nielsen BookScan retail database. BookScan is a continuous retail sales monitoring service for trade books and includes retailers spanning chains, independent retailers and discount departments stores. BookScan members account for around 90 per cent of all retail trade sales in Australia.

The Commission has also drawn on the preliminary results of a 2007 survey on the publishing industry undertaken by the University of Melbourne, and submitted by the Australian Publishers Association. The survey covered over 50 respondent publishers, including a substantial majority of the larger Australian publishers, with final results expected to be available prior to the completion of this study.

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.

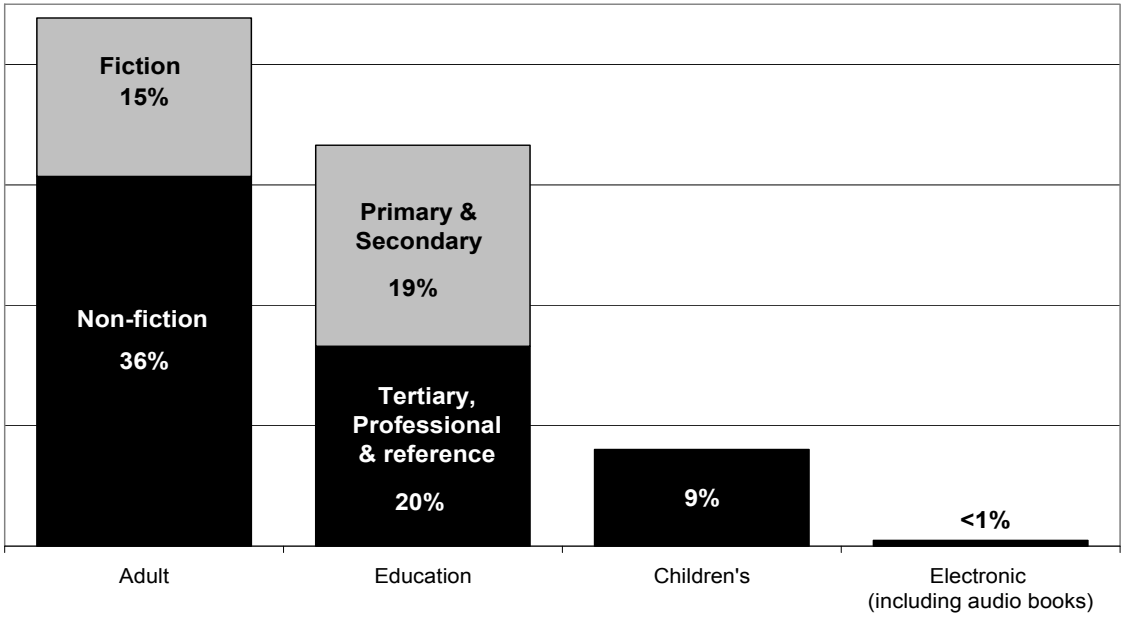
Interpretation issues

However, while helping greatly to augment the ABS data, this additional information has not directly resolved some important interpretation issues that have confused discussion on the 'local' component of the books market and, ultimately, on the benefits and costs of the Parallel Import Restrictions (see chapters 4 and 5).

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). In fact, the ABS define Australian published works to include both locally authored 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 mainly on the Nielsen database, the Commission has attempted to more precisely delineate between these categories.

be a final ‘consumption item’, purchased primarily for enjoyment. Hence, consumers’ demand for individual trade titles is likely to be more responsive to their price than demand for education books — although there is evidence that overall demand for books is relatively unresponsive to price (see, for example, van der Ploeg, Canoy and van Ours 2008). Also, 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 in fact non-fiction books (including autobiographies, history, gardening and cooking books).

Figure 2.1 Sales of books to consumers by category of book, 2003-04^{a, b}
(per cent of total value)



^a 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. ^b 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 (2005, Book Publishers, Australia, 2003-04, Cat. no. 1363.0, table 9).

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 around \$2.5 billion a year. Specifically:

- Using the BookScan data, the Commission estimates that, in 2007-08, sales by Australian book retailers exceeded \$1300 million. Application of the 60:40 ratio of trade to educational books, 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 submitted by the Australian Publishers Association suggests that the total output of the publishing sector in 2007 was around \$1.8 billion. 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, would produce an estimate of well over \$2 billion.
- 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.

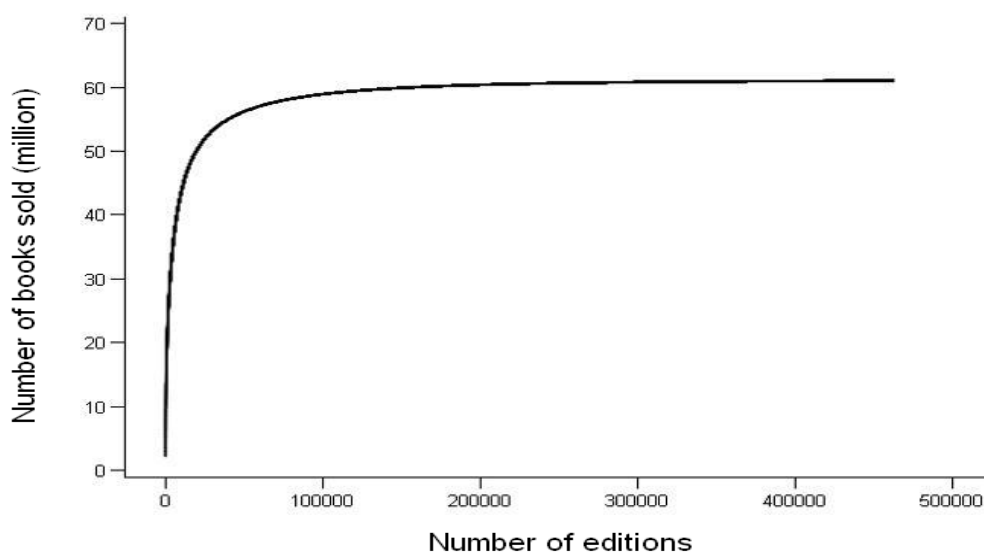
Some important characteristics of trade book sales

Many participants advised the Commission that, for the majority of trade titles, the bulk of sales occur in the year after first publication. Moreover, as in other countries, a relatively small number of bestsellers account for the lion's share of total trade book sales, 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 in 2007-08 had individual volumes of less than 120 units, with the bottom 50 per cent selling 5 units or less (figure 2.2). However, trade books can move between the 'back list' and the 'front list' — when, for example, a previously published author is discovered, or a film version of a book is made.

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.

Figure 2.2 Cumulative volume of trade book sales by title, 2007-08^a



^a The cumulative volume of trade books sold, but not necessarily published, in 2007-08, by the number of editions in order of sales volume.

Data source: Nielsen BookScan database, unpublished data.

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.

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; best-seller 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.

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. For example, Cengage Learning (sub. 52, p. 8) said that 'Publishers in the tertiary market segment travel to each tertiary institution and visit lecturers and course administrators at their worksite to secure book adoptions.' The recommendations or prescriptions by teachers are influenced by requirements in national and state teaching curricula. The upshot is

that, compared to trade books, consumers have less discretion over which educational books they read, making them more susceptible to monopolistic pricing practices.

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, the evidence suggests that these households do not read any less (Australia Council 2008c). It 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. In 2003-04, the ABS survey indicated that 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 and, according to Think Australian (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 ...’.

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 books and selling them at a substantial discount to the recommended retail price.

Consumers also purchase books from a number of 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

Though almost two thirds of Australian households have access to the internet, the market share held by online booksellers (overseas and local) appears to be low. For example, 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 back-list 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 and other overseas online retailers, 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 were estimated to 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 United States, 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.

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.

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 chapter 5, preliminary estimates by the Commission using the Nielsen BookScan database suggest that, in 2007-08, locally authored works accounted for around 40 per cent by value, and around one-third by volume, of sales of the top 5000 trade titles.

Monetary income

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 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 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 (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 publishers¹
- book adaptations, including film and play adaptations
- grants, prizes and fellowships, from both government and private sector sources (chapter 3).

Psychic income

In addition to the royalties (and related income) that author’s receive from book sales, the non-pecuniary rewards that many derive from writing — such as the ‘joy of self-expression’ (Abbing 2002) — are widely acknowledged to be significant. In turn, such rewards may be a strong motivator for the generation of manuscripts.

Use of literary agents and editors

A significant minority of Australian authors are represented by literary agents. And though Throsby and Hollister (2003) estimated that in 2001 only one quarter of all

¹ In 2007-08, CAL distributed around \$40 million to its members, including authors and publishers, for material copied from books (CAL 2008).

professional writers used agents, 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

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. However, according to the Think Australian survey, there are around 280 entities currently publishing more than 5 titles a year. (By way of comparison, the ABS estimated that, in 2003-04, there were around 230 businesses whose main function was publishing (ABS 2005a)). And of the more than 50 respondents to the recent University of Melbourne publishing survey, over 40 per cent published more than 50 titles in 2007 and over 30 per cent more than 100 titles (Australian Publishers Association, sub. 244).

Based on the (preliminary) results of this same survey, the Australian Publishers Association (sub. 244, p. 21) suggested that the total sales revenue of Australian publishers was around \$1.8 billion in 2007. This is more than one-third higher than the value of output at the time of the last ABS survey in 2003-04.

Most of this income comes from domestic sales of what are commonly referred to as Australian 'originated' titles — though these comprise both locally and overseas 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. Direct employment in the local publishing sector is around 5000, a quarter of whom are part-time or casual (Australian Publishers Association, sub. 244)

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
- 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) said that the arrangement now applies to most new books, including 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. 36-37)

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
- 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 (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, publishers’ portfolios comprise around 50 per cent of locally originated titles or adaptations of overseas versions. The remainder are imported books, principally from the United States, the United Kingdom 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.

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 United States and the United Kingdom, 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 United States and the United Kingdom. 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 United States and the United Kingdom (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. 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 market is dominated by two 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. Together, these two firms 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 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 front list 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.

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.
- The Australian Government supports the books sector through copyright law and 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.

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 based on a percentage of the recommended retail price or sales revenue from a book. Publication of an author’s work as a book is not the only right that they 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 authors’ 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.

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 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).

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.

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 on 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

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.

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. (Dr 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)

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 how the PIRs might be considered.

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. 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 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) aim 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, establishes 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 the costs are often more diffusely spread across the economy and are therefore more difficult to observe than the benefits that accrue to particular sectors. Under the CPA analysis, there will be circumstances where restrictions on competition are justified on public interest grounds.

The terms of reference for this study ask the Commission to consider the impact on all relevant parties including, but not limited to, authors, publishers, printers, distributors, retailers and consumers.

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 related 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). Promoting literacy is also an important objective of government policies that helps to overcome social disadvantage, and establishes the platform of human capital that underpins economic prosperity.

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

Beyond the support provided by copyright, the Australian Government provides (limited) financial support for Australian literature in a number of ways:

- 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. Box 3.3 details some of the direct ways in which the Australian Government supports the book sector. Chapter 6 contains further discussion of Australia's cultural policy objectives.

Box 3.3 Australian Government book programs

The Australia Council Literary Board

The Australia Council for the Arts is the Australian Government's primary arts funding and advisory body, providing \$6.7 million of direct support for literature in 2007-08 (Australia Council 2008a). The Council's Literature Board administers grants to the books sector, including direct financial support to literary creators, and grants to organisations that offer infrastructure support to the literature sector and income-generating opportunities for writers. In 2008, the Board's grants ranged from \$2000 for published play scripts to \$100 000 over two years for writers to create new works (Australia Council 2008b). Grants are made according to funding criteria which can include 'literary merit', evidence of an organisation's planning or an 'ability to expand readership of Australian works'.

'Books Alive!'

The Australian Government's annual \$2 million 'Books Alive!' program is the largest annual program directed at promoting literacy and stimulating reading, principally through Australian-authored books. 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.

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 Rights schemes

The Public Lending Right (PLR) scheme compensates Australian authors and publishers for the free use of books held in public libraries while the Educational Lending Right (ELR) scheme compensates for the use of books held in educational institutions including school, TAFE and university libraries. These schemes recognise that while free access to libraries is a public good, part of the cost of this is borne by authors and publishers through forgone sales.

In 2007-08, the PLR scheme paid \$7.6 million to Australian authors (82 per cent) and publishers (18 per cent). Australian authors were eligible for a payment of \$1.57 per copy of their books held in libraries, while publishers were eligible for 39.25 cents per copy. Total payments to individual authors are generally small — in 2007-08 fewer than 15 per cent of the 8600 recipients received more than \$1 000, although one author was paid more than \$100 000. Some \$10.4 million was paid under the ELR scheme in 2007-08 (PLRC, 2008).

4 The price and assistance effects of the parallel import restrictions

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, Parallel Import Restrictions (PIRs) potentially facilitate international price discrimination, which can lead to higher prices in countries such as Australia.
- 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 there would be material effects on prices in at least some market segments from removal of, or significant amendment to, the PIRs:
 - Price comparisons, though problematic, suggest that prices in Australia for some books are from time to time higher than the price of equivalent editions in the United Kingdom (UK) and the United States of America (US).
 - Were PIRs removed, books — particularly educational texts — could potentially be imported from Asia at substantially lower prices, and Asia could also serve as a greater source of books more generally in the future.
 - Parallel imports of remainders from the UK, US and other markets could put substantial pricing pressure on some back list titles in Australia.
 - Experience in other sectors supports the view that relaxing PIRs would likely put downward pressure on book prices in Australia.

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 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 in theory assist copyright holders, by allowing 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-and-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.
 - 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 latter, 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 ‘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.

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 United States and the United Kingdom, 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 conditions — 'like with like' — in principle provide the best means of ascertaining price differences between markets.

In effect, PIRs support the segmentation of world book markets, allowing 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, for English-language books, separate publishing rights might be sold for the United States, the United Kingdom, Australia and/or other key Commonwealth countries, and 'the rest of the world' (including Asia, Africa and the rest of Oceania). With PIRs in place to prevent 'arbitrage', publishers can use this system to engage in 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 here and thus not covered by the restrictions) could take the title’s sales by being sold at a lower price. 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 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 rights for their works) would be expected to receive higher payments for the Australian rights to their titles.

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 (chapter 3), which are not tied to the sales record 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 chapter 5). 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 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 right 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 than 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 (such as certain Asian wholesaling operations — see later) that could otherwise have serviced the still fully open (non-PIR 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 Indicators of the magnitude of 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. It would clearly be possible to parallel import books from markets such as the United Kingdom (UK) and United States of America (US), from which much importation already occurs. However, whether an extensive supply of books, in terms suitable for Australian booksellers, could be arranged from Asia requires investigation.
- 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, advanced, English-speaking markets, particularly the UK and US. Participants in this study also provided such comparisons, and the Commission has augmented these with its own analysis.

Even so, as the Commission indicated in the Issues Paper, it has reservations about how much can be garnered from such analyses. 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 both the 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 point in the exchange rate cycle requires comparisons at several points in time.

In the second instance, it is unclear that the results of price comparisons with the UK and US, even if robust methodologically, provide a good indication of what effects removing Australia's PIRs might have on book prices in Australia, and thus provide a metric on the price impacts of the restrictions. 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, some books might, as alluded to above, be sourced from elsewhere at a lower cost. That said, remainders from any country, including the UK and US, could also offer a much cheaper source of books, including broadly like-for-like editions, at least for some titles.

Accordingly, while price comparisons may in some circumstances shed some light on the effects on PIRs, or the potential effects of their repeal, ultimately, assessments of these matters must draw on a range of evidence and indicators. With these limitations in mind, this section explores what the available evidence is able to reveal about the PIRs' impact on book prices in Australia.

Prices of current list trade books from the United Kingdom and United States

The PSA/ACCC studies

The Australian Competition and Consumer Commission (ACCC) and, before it, the Prices Surveillance Authority undertook a range of surveys of 'current list' (as distinct from remaindered) books prices for the period from 1989 to 2001. These included: a survey of the recommended retail price (RRP) of prices in publishers' catalogues for the UK, US, Australian and Canadian markets; surveys of bestsellers in the UK, US and Australia; and a survey of the 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 recommended retail prices (RRPs) 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 US, these price differences varied over time. In particular, the

ACCC found that, in 2001, books prices were lower in Australia than in the UK, and on a par with those in the US.

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)

Comparisons submitted by participants

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 (forthcoming).

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 only rarely the most expensive among the three countries, and on a number of occasions was the least expensive.
- In its comparison of the prices of 11 international bestselling titles at the end 2008, the Coalition for Cheaper Books (sub. 218) 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) concluded on the basis of its comparison of 16 best selling 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 some titles available at lower cost in the UK and US.

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 typically C-format trade paperbacks whereas those in the UK and 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 manner in which RRP were adjusted to reflect freight costs and other factors.
- 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) 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.

The Commission’s comparisons

While aware of the inherent limitations of price comparisons, the Commission has undertaken a range of comparisons for this study to help explore what such exercises can reveal.

The Commission's exercise drew on the extensive data contained in the Nielsen BookScan databases for 2007-08 for the top 5000 editions (by sales value) 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 of equivalent editions.
- 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. While this reduced the sample size, particularly for the like-with-like comparisons, it also minimised the risk of inappropriate matches. 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 (forthcoming).

Even with this 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 Commission's comparisons 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. Australia's exchange rate was relatively strong in 2007-08, suggesting that any price gaps would normally be smaller than those in the comparisons. As noted, this is a limitation of the price comparisons submitted by participants as well.
- Further, those comparisons based on RRP 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 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.

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 sampled editions in Australia were on average 9 per cent higher than the RRP of equivalent editions in the UK, and 30 per cent higher than the RRP of equivalent editions in the US.
- 2) The actual sales price of sampled editions in Australia was on average 18 per cent higher than the actual sales price of equivalent editions in the UK. (Data on actual sales prices are not available for the US market.)
- 3) The price of the cheapest Australian edition of titles was on average 13 per cent higher (on an RRP basis) and 22 per cent higher (on an actual sales price basis) than the cheapest edition of the title in the UK, and over 50 per cent higher (on an RRP basis) than the cheapest edition of the title in the US.

There was some variability within these general trends. For example, at one end of the Australia-UK (like-with-like) comparisons, nearly one-in-five titles had a lower RRP in Australia than in the UK. Meanwhile, at the other end, for around one-in-six titles, the Australian price exceeded the UK price by at least 25 per cent. And in the Australia-US comparison, for one-in-six titles, the Australian price exceeded the US price by at least 50 per cent.

Clearly, the significant price gap reported in relation to the US was driven in large measure by the high Australian dollar in that year. Sensitivity analysis undertaken by the Commission (appendix D) shows that the reported price gaps would narrow, and potentially even reverse, in years when the Australian dollar is weak.

Interpretation of price comparisons of Australian and UK/US current list books

The previous price comparisons by the ACCC, and those undertaken for the present study, suggest that, at a minimum, the prices of current list books in Australia will sometimes exceed those in the other markets, in some cases by a significant margin. Not unexpectedly, fluctuations in the exchange rate have a significant bearing on measured price gaps. In conjunction with the anecdotal evidence cited above, the Commission has no doubt that, from time to time, there would be opportunities in the absence of PIRs for booksellers to source current list books at lower cost from the UK or US than from a local publisher (although, in practice, local publishers would no doubt be more attentive to the price of competing foreign editions in such circumstances when setting their price).

In this context, it is important to recognise that 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, at least 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.

The Commission is less convinced that these markets would provide access to an attractive low cost source of supply of current list books on a continuous basis. This partly reflects its interpretation of the results of the price comparisons submitted and conducted in the context of this study. It also reflects the implications of the economic theory of price discrimination, which underpins the notion that PIRs can lead to differences in prices between markets in the first place. Under this theory, in the absence of major differences in production costs, or levels of competition among domestic publishers or from internet booksellers, it would be expected that relative price levels will correlate closely to the intensity of demand in individual countries and in turn to income levels. This in turn suggests that average price levels should generally be lower, or at most little higher, in Australia than in the US, reflecting our lower income level.

Prices of trade books from lower cost sources

While many studies have focused on comparing new book prices in Australia to those in major English-speaking markets, and particularly the two major markets of the UK and the US, the actual price outcome after removing the PIRs would be driven largely by the cost of books from the best value or cheapest feasible source in any country. While this may be the UK or US for some books, books from Asia or elsewhere in the world, and ‘remainders’ from the UK, US or other English-speaking markets, are also potential sources.

Asia

Asia is clearly a potential source of substantially cheaper education books (see next section), and could also be a potential source of cheaper trade books. In its 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 the submission did not indicate at what price the titles could be landed and sold in Australia).

However, although the Commission raised the possibility of supply from Asia in its Issues Paper, only a handful of submissions alluded to the potential for the parallel importation of trade books from Asia were Australia to remove its PIRs (for example, subs. 70, 212 and 218). In the Commission's discussions with industry stakeholders, those consulted were also somewhat ambivalent about the possibility. For example, some industry players indicated that they could be reluctant to initiate such business in the short term, given issues of supply reliability and relations with publishers in Australia (and the 'sale or return' conditions they offer). However, they could envisage that, in time, a trade of this nature would emerge.

In this respect, while it may not be commercially feasible to parallel import mainstream trade books from Asia under existing industry structures, it is possible that the removal of Australia's PIRs would generate incentives to alter these structures. For example, in relation to the educational books market, evidence from John Wiley & Sons (see box 4.4) indicates that 'level of service' issues at present limit the attractiveness of imports of educational books from that source. However, Wiley thought that, were the PIRs to be removed, wholesalers could soon set up in Asia who could supply significantly cheaper books to Australia with desired levels of service quality. While the trade market differs in some respects from the education market, the potential for similar developments to occur in relation to trade books over the longer term cannot be ruled out.

It should be recognised that, were parallel importation of trade books from Asia to become feasible, the price at which books 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.' (IPA 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 to the lifting of Australia's PIRs by effectively setting a joint price for developing countries and Australia. This would result in the price in Australia declining somewhat and the price in Asia rising somewhat, with the final price point ostensibly depending on the relative importance of the two sub markets.

**Box 4.2 Could parallel imports be sourced from Asia?
— John Wiley & Sons' view**

It is the possibility of such wholesalers or other 3rd parties supplying the Australian market from Asia that is causing us grave concern. Why? In order to increase the size of the (low-priced) book markets in Asia, overseas publishers including Wiley have supplied their sister companies or local distributors at prices that are significantly lower than those in other markets around the world, including Australia, the US and the UK. Therefore, wholesalers in Asia are able to source stock of these titles at prices that are significantly cheaper than in those other markets.

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 of terms) and represent an attractive source of supply to booksellers in Australia. (John Wiley & Sons, sub. 169)

On the basis of the (limited) evidence presently before it, together with its understanding of the dynamics of markets, the Commission is inclined to the view that Asia could, in time, become a significant source of parallel imports for trade books were the PIRs to be repealed, and that this could put material downwards pressure on trade book prices in Australia. Participants' views on this issue would be particularly welcome.

Remainders

Remainders are printed copies of titles that 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 on its date of initial release and subsequent popularity.

Where a title is remaindered overseas ahead of the date at which it is 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 (sub. 61), 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.

Many submissions referred to the prospect of remainders being imported to Australia were the PIRs removed, and a number of authors — concerned about the effects of parallel imports on their royalties (see box 4.3) — cited instances in which remainders had already been imported to Australia (sometimes in breach of the current laws).

While there are exceptions, remaindered editions will typically only be available during the later stages of the book's commercial life, or when the book is a back list book. According to the LECG (2007) study, in New Zealand parallel importing (including importing of remaindered books) has mainly occurred on back list and niche titles. To the extent that the bulk of sales tend to occur in the initial period after the release of a book, the amount of pressure that remaindered editions could place on prices in Australia would be more limited.

Further, the availability of remainders for parallel importation from abroad would in part depend on the strategy adopted by publishers. As discussed in chapter 5, it is plausible that, were the PIRs repealed, publishers of books that were expected to achieve the bulk of sales on the Australian market would delay the release of their books in overseas markets to reduce the risk of remainders from re-entering the Australian market. On the other hand, it seems unlikely that Australian market considerations would have an effect on the release decisions of most foreign authored books, so remainders would be more likely in this segment, and therefore put price pressure on books overall.

That said, even for some books destined primarily for the Australian market, there would be some prospect that the parallel importation of remainders could lead to significant price benefits for Australian consumers, particularly if demand for the book were to be stimulated later in a title's life. 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)

In sum, the Commission would expect the availability of remainders from abroad to put pricing pressure on some back list titles — an area in which, as noted in chapter 2, retail competition appears to be less fierce compared to front list titles. This could in turn put some pressure on front list prices, although the extent of such flow-on effects would be less substantial.

Box 4.3 **Remainders and author's royalties**

A number of participants expressed concern about the potential for the parallel importation of remainders to undermine author's 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 cited by Spinifex Press an Australian-authored book being sold at its RRP, 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).

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.

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 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 best-selling 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. The Association noted that there was a ‘price advantage from buying them [textbooks] in Australia rather than through Amazon’ (sub. 244, p. 42).

The comparisons were all based on an exchange rate of around 70 Australian cents to the US dollar. Presumably, the gaps between the price of textbooks in the two countries would be narrower when the Australian dollar was stronger. However, the Commission accepts that it is unlikely that the US would represent a significant source of cheap textbooks were Australia’s PIRs to be removed.

However, textbooks are far cheaper in Asian markets. Graeme Conolly (sub. 60) — who is the head of the Campus Booksellers’ Association — noted a significant difference in 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)

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).

This evidence supports the notion that educational publishers practise international price discrimination, with the highest prices in the US where income levels are also highest, somewhat lower prices in Australia and much lower prices in Asia. As noted in chapter 2, educational books are often prescribed by teachers or institutions and, once this has occurred, effectively have no close substitutes. Thus, the demand for educational books may be less responsive to price compared to that for trade books. For this reason, any international price discrimination may be expected to result in relatively large price gaps for educational books.

In turn, this suggests that substantially lower prices for educational books in Australia are possible, notwithstanding some erosion of current differentials were local booksellers to seek a ‘sale or return’ condition from Asian suppliers. As with trade books (discussed earlier), there would also be some rebalancing of prices between Asia and Australia were the PIRs removed. Further, 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 parallel import restrictions were removed, any downwards 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 parallel import restrictions in other markets may provide some indication of the price effects of the PIRs on the Australian book market. 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 (forthcoming). As noted there, 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. With these qualifications in mind, the Commission notes that the weight of evidence suggests that the reforms lead to a reduction in average prices in some market segments.

Beyond evidence of the effects of parallel import restrictions 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. This 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). In this context, as discussed in chapter 5, participants identified a range of opportunities for cost savings within the Australian book sector that would help to put downward pressure on local book prices.

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 could otherwise be sustained. Put simply, 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 Summing up

There are many substitutes to titles published in Australia, and the market for any one title is not ‘closed’. Even so, PIRs have the potential to result in higher prices for books in Australia, and in doing so provide assistance to Australian copyright holders.

In practice, measuring the magnitude of any actual price effects resulting from Australia’s PIRs is difficult. In particular, price comparisons between current list books in the US, the UK and Australia do not provide a strong basis for gauging

these effects. The Commission has thus had to draw on qualitative evidence together with theory, as well as some quantitative evidence, to gauge these effects and has not put a figure on them.

The Commission's judgment at this stage of the study is that Australia's PIRs put upward pressure on prices in at least some segments of the books market. Specifically, from time to time, there would be opportunities in the absence of PIRs for booksellers to source current list books at a lower cost from the UK or US than from a local publisher. Further, the parallel importation of remainders from these (or other) markets could put significant downwards price pressure on parts of the back-list. The Commission is also of the view that, were the PIRs removed, books — particularly educational texts — could potentially be imported from Asia at substantially lower prices, and Asia could also serve as a greater source of books more generally in the future.

The upward pressure on prices resulting from the PIRs will have a range effects on the books sector and the economy more broader. These are explored in chapters 5.

5 Key market impacts of the parallel import restrictions

Key points

- The PIRs sustain higher activity in the book production industry in Australia, although the quantum is difficult to assess.
 - The PIRs provide a particular incentive to publish Australian authored books with export potential, as well as foreign authored books
 - Books with an Australian-only audience are not directly affected, but may benefit indirectly from the broader stimulus to the publishing industry.
 - Additionally, the 30 day rule has created more demand for Australian printing.
- In the absence of the PIRs, firms would make adjustments, with some finding new efficiencies that would at least partly compensate them for the greater degree of competitive pressure.
- 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 input costs 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 less access to better value editions of the titles they wish to purchase.
- Many of these effects simply represent transfers between sectors of the Australian economy. But there are some associated efficiency costs.
 - The price-raising effect of the PIRs means that Australian consumers ‘assist’ foreign authors and publishers, as well as their local counterparts. Indeed, for trade books, for every additional dollar disbursed to Australian copyright holders, a broadly similar amount could go to foreign rights holders.
- Expansion in the books industry is likely to have curtailed consumer spending on other goods and services and come at a cost to other industries.

As noted in chapter 4, to the extent that the Parallel Import Restrictions (PIRs) lead to higher prices for books, they provide assistance to copyright holders in Australia, enhancing the value of their rights. While it is difficult to isolate the exact impact of a particular government policy on an industry, any change in the value of the rights

held by publishers and authors will clearly have a range of impacts on their decisions. As well as examining these impacts, this chapter also examines how they would flow through to affect the other major parties within the books sector — printers and booksellers — as well as consumers and the Australian economy more broadly.

The provision of assistance typically benefits the recipient industry and its suppliers, but comes at a greater cost to consumers and other industries. While the PIRs are likely to be of benefit to book producers, they are also likely to bring a range of broadly offsetting costs to other parts to the economy. How large these benefits and costs would be depends in large measure on how significant are the price-raising effects of the PIRs, and thus the assistance they provide.

Bearing that in mind, this chapter examines the nature of some of the key market impacts that flow from the PIRs, as a result of the price raising effects. Most participants in this study couched their views of the effects of the PIRs on the books industry in terms of what would happen were the restrictions removed, while others 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 a particular title to Australian booksellers. This enables them to set a recommended retail price (RRP) for a title, safe in the knowledge that, even without discounts, 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 returns from higher pricing, allows Australian publishers to invest in author development, manuscript editing and marketing of books, and as well, encourages more firms to enter the publishing market.

Several participants commented on the benefits the current PIRs provided to Australian publishers and many, like Scribe Publications, focussed specifically on the additional effect of the 1991 amendments:

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 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, among other things, changes in demand, exchange rate fluctuations, 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 a 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 — by reducing the value of the rights they hold — see some contraction in the number of Australian publishers as well as the overall output of the publishing industry. Several participants commented on 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)

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 and 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)

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)

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)

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)

... 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 [with] 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)

There were also contrary views. For example, Peter Donoughue (sub. 8) 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)

Moreover, although there have already been some improvements in efficiencies in the industries — such as 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. It is difficult to predict how the sector would respond to their removal, including to what extent efficiencies could be generated (for example, in marketing or distribution), or new business models could emerge within the sector that might ameliorate the overall effects of a reduction in assistance.

While the degree of any contraction is difficult to predict, 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, the Australian Publishers Association provided preliminary results of a Melbourne University survey that found that less than half of the 50 respondent publishers felt that they would reduce their Australian output, while less than one-fifth of those surveyed felt they would reduce output by more than 10 per cent:

In this environment, publishers will change their strategy, with some 40% indicating that they would need to reduce their annual output of new Australian titles, including 17.8% of total respondents indicating a reduction of 10% or more. (sub. 244, p. 24)

Other industries that have had their parallel import protection removed — the music industry in Australia and the book industry in New Zealand — do not appear to have suffered major detriment due to the removal of the PIRs. That said, as discussed in appendix D (forthcoming), differences in market size and characteristics, and various other factors affecting the performance of these sectors post-reform, means that caution is required in seeking to draw definitive lessons from these case studies of PIR reform.

Some specific impacts within the publishing industry

There would be differences in the effects within the Australian trade and education publishing sectors.

Within the trade sector, many of the local arms of multi-national firms could well retain a presence in Australia, benefiting from existing trade relationships and the ability to develop local authors and tailor local editions to Australian preferences, as well as the natural protection provided by the costs of freighting books from other countries. However, it seems possible that, at least in some cases, the role of the Australian offices of such firms would evolve into a model focussed more on distribution than independent publication.

There would be risks to some smaller Australian publishers, although these would depend on the exact 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. (The Coalition for Cheaper Books, sub. 218, p. 3)

Similarly, histories, biographies or novels with distinctly Australian themes 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 without the PIRs. However, this effect could be ameliorated to some extent through careful timing of the sale of the rights to overseas markets (see section 5.2).

While Australian-authored works would likely retain some market share in the absence of the PIRs, 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. (The Text Publishing Company, sub. 63, pp. 12–13)

Accordingly, 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)

While some foreign-authored titles are already published in Australia without PIR protection, the Commission understands that a tacit agreement between publishers and booksellers plays a part in sustaining this practice.

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 ... (Harper Collins Publishers, sub. 269, p. 4)

Such practices do not represent cross-subsidisation in an economic sense, but they do provide economies of scale 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.

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 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)

While there is the potential for such ‘free riding’, as the ACCC argued, this 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 existing level of promotion of local titles. However, publishers felt that parallel imports may have constrained further growth in promotion (see appendix D (forthcoming)).

In Australia, while marketing overall could well be lower without the PIRs, the impact on the marketing of Australian authors could be moderate in comparison. Given the additional expense of funding tours by overseas authors, as well as the increased likelihood of the presence of competing editions of their books, touring Australian authors — whose copyright the Australian publisher is better able to control — could become a relatively more attractive focus for marketing activities.

Australian educational publishing and the bundling of 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.

Of note is the importance of timing and reliability of supply to sellers of tertiary textbooks, given that supply is highly desirable for students before the commencement of each semester. 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 surcharges and delays in back-order delivery times. (University Co-operative Bookshop Limited, sub. 216, p. 5)

Several education publishers indicated that in the absence of the PIRs, they might cease offering — or start charging for — the 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 publishers 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. 1)

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 teaching aids justify their cost. That is, there is little scope for consumers 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, competition in the marketplace would be expected to manifest in the development of a separate market for these auxiliary materials.

In educational publishing, it is also common to add other local aspects to overseas works, to provide 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.

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 methods, 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 (sub. 169, p. 1) pointed to inefficient distribution arrangements.

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

As noted in chapter 4, to the extent that the PIRs lead to higher book prices, they assist authors by increasing the value of their copyright. Additionally, the PIRs encourage the viability of more publishers who may be willing to purchase and promote more Australian manuscripts.

As with publishers, the impacts of any change to the PIRs on authors would also vary (see box 5.2 for a selection of participants' views). Authors of Australian-specific content are likely to be somewhat insulated from any contractions in publishing as there would still be substantial 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, authors would generally face reductions in their income. Lower RRP in the domestic market would translate into lower royalty payments. Authors would also receive lower 'export royalties' on any copies of their books that were imported into Australia from overseas. Further,

Box 5.2 Selected participants' views on the impacts on authors

In submissions, many authors provided examples of how they felt the current restrictions 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)

given that copies of books sold as remainders generally return no royalties for Australian authors (see chapter 4), any importation of remainders that displaced rather than supplemented existing sales would have reduce the total income earned from the books concerned. These reductions in income would likely result in some authors (particularly those whose income from writing is currently marginal) exiting the market, and might discourage some others from entering it.

Many authors felt that in the absence of PIRs, they would ‘lose control’ over the sales of their books. In essence, once the rights to books are sold overseas, local copyright holders would no longer be able to control which edition of the book is sold in Australia, potentially impacting on the returns to the Australian copyright holders. Nonetheless, as several participants observed, it would be possible to mitigate (though not eliminate) the effects by delaying release in overseas markets:

... 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. (Tim Winton, sub. 204, p. 13)

Some participants (for example, Peter Donoghue, sub. 8) argued that this effect could be further ameliorated through the use of specific provisions in contracts concerning copyright. Although such provisions may be permissible under the exceptions contained in the Trade Practices Act (see box 5.3), the Commission is inclined to agree with the many participants who argued that such contractual restrictions would have limited effects as they would not prevent third parties such as wholesalers from importing copies into Australia. As the Australian Publishers Association noted:

... it is typical of a book publishing contract that a national publisher may not make its edition available for sale in any foreign territory, or is excluded from making the book available for sale in specific territories where the author has a separate national contract. The proposal to remove territorial copyright from the Australian statutes will not affect these contracts, but will allow wholesalers to act as gobetweens to change an illegal export into a legal one with no value-add. (sub. 244, p. 57)

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 who presented 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.

Aside from the situation facing established authors, some new or undiscovered authors would 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)

Coupled with lower prospective returns, the difficulty for all new authors in obtaining local publication would, as noted above, most likely discourage some from entering the market in the first place.

Box 5.3 Section 51(3) of the Trade Practices Act

Part IV of the *Trade Practices Act (TPA) 1974* prohibits restrictive trade practices and anti-competitive conduct, and includes prohibitions on price-fixing, secondary boycotts, misuse of market power, exclusive dealing arrangements, resale price maintenance and acquisitions and mergers that substantially lessen competition in a market. The TPA also contains a number of exceptions to these prohibitions, allowing actions that would otherwise breach the TPA. These exceptions are contained within section 51(3) of the Act.

In relation to copyright, for an action to be permissible under section 51(3) that would otherwise be a Part IV offence, it must be 'related to a licence granted by the proprietor, licensee or owner of a copyright.'

Section 51(3) will act as a defence only if, in the course of granting a licence to use copyright material, the owner of that copyright commits one of the following offences:

- Section 45: collusive conduct in relation to contracts, arrangements and understandings concerning goods and services, where the conduct would result in a substantial lessening of competition
- Section 47: exclusive dealing, that prevents someone from dealing with the competitor of a supplier of goods or services
- Section 50: acquisitions that result in a substantial lessening of competition (or an acquisition outside of Australia under section 50A).

In this way, section 51(3) 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.

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 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 its removal would lead to some contraction in activity (see box 5.4).

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:

According to participants, some of the market growth has been due to the 1991 amendments to the Copyright Act, in particular the introduction of the 30 day rule. ... 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)

Box 5.4 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 participants' views include:

Based on industry feedback, *Printing Industries* projections point to the loss of 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.

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)

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 — could provide an advantage for the local printing industry if it were faced with increased competition from overseas printers. Lower freight costs would be another advantage. As the Victorian Government stated, these advantages would remain even in the absence of the current 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)

As such, while the Australian printing industry would likely be smaller 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)

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, such as Maryborough in Victoria:

... 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, as discussed in chapter 7, it is not the role of the PIRs to operate as a regional support mechanism.

Impact on printing costs

Beyond the direct impact on the printing industry, several participants expressed concerns that any contraction in the industry 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. (The Text Publishing Company, sub. 63, p. 21)

However, it is important to note 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 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, providing 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)

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, and thus constrain their ability to increase prices to domestic publishers. Therefore the Commission does not consider that the further opening of the market would lead to higher printing costs for local publishers. And to the extent that reduced throughput led to higher unit costs for Australian printers, then 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

Under the current PIRs, where there is an Australian edition of a title, booksellers are required to source their retail stock of the book from the domestic publisher (or local 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. (The Coalition for Cheaper Books, sub. 218, p. 6)

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 respect, the Commission understands that, under the current PIR regime, there can be scope for rights holders with market power to engage in practices that, while maximising their own returns, in some cases may be detrimental to booksellers, and indeed consumers. For example, where there is substantial market demand for a particular book and the Australian rights holder has parallel import protection for the book, the rights holder may be able to, among other things:

- manipulate the price of the book (by arbitrarily adjusting the discount rate provided 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.

As noted above, 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.

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. Their ‘top 10’ 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 wholesalers or publishers. 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.

Without PIRs, were booksellers to freight in large shipments of books from overseas suppliers, 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 5.5). 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 and personal interaction 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.

The experience that a consumer gains can vary between types of booksellers. Different bookstores target different consumers in different ways, such as by offering a variety of prices, store sizes, title availability and additional services. Notably, 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:

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. (Walker Books, sub. 256, pp. 11–12)

In an open market, the demise of the independent bookshop would deprive the retail trade of a significant source of diversity and richness. And new Australian authors would lose their greatest champions. (Random House Australia, sub. 193, p. 22)

Box 5.5 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. (The 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)

While 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, and in good condition.

... 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. But the vast majority of my new books I buy here, in Australia ... (Sophie Masson, sub. 72, p. 2)

Additionally, there was 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. (Joint submission ADA, ALCC, and ALIA, sub. 252, p. 7)

Although independent booksellers are not well positioned to compete on price alone, they could still compete in an open market by continuing to offer differentiated levels of service, advice and overall experience for their customers, encouraging loyalty:

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

Even so, some participants believed that this ability may 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)

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 option raises costs to publishers, and accordingly the from the RRP 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 ‘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 for booksellers’ business. In the long run, to obtain business in Australia, overseas suppliers might need to adapt to offer ‘sale or return’ conditions,

or offer discounts of sufficient magnitude that booksellers would be willing to purchase on a ‘firm sale’ basis.

One final issue raised by participants is the extent to which any downward pressure on the price of books would benefit booksellers, and what portion would then be passed on to customers. While the total volume of books sold may be relatively unresponsive to changes in price, competition between different titles, and between different booksellers on price and other services, coupled with the lack of significant barriers to entry in the booksellers’ market, suggests that lower costs are generally likely to be passed on to consumers over the longer term.

Overall, the net effect of the PIRs on booksellers would be mixed. In their absence, further downward pressure on the prices offered by publishers, coupled with improved choice of supply options could enable them to offer lower prices. This might translate into some increase in sales. Domestic booksellers would have more ability to compete with international online sources. However, there could be shifts in market share between the different retail channels within Australia, with larger stores that are better able to exploit economies of scale in freight and supply expanding, but independent booksellers potentially contracting, unless they remained able to sufficiently differentiate their services to provide a competitive offering.

Education Booksellers

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

Within the higher education sector of the market, lecturers prescribe their choice of textbook for each course on offer, 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 as such:

...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 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. (Graeme Connelly, 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 texts, including cheaper overseas editions, providing that timing and reliability of supply met their needs.

5.5 Impacts on consumers

As the terms of reference make clear, the interests of consumers are central to this study. As noted in chapter 2, total consumer spending on books is around \$2.5 billion annually. However, whereas the effects of the PIRs on the books industry attracted comment in most of the submissions received, the impacts on consumers received relatively limited comment (box 5.6).

Price effects

The benefits to the book industry from the price raising effects of the PIRs will come at a direct cost to consumers. Thus provided that competition amongst booksellers is sufficient to ensure that any cost reductions are passed onto consumers — as the Commission considers will be the case over the longer term at least — then removal of the PIRs would provide benefits to them.

The response 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, lower prices would most likely result in some increase in the level of purchases, though as noted in chapter 2, the overall responsiveness of demand to price changes appears to be quite low.

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 the relevant material).

Changes in range and availability

Removal of the PIRs would also benefit consumers in other ways.

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)

Box 5.6 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. (Joint Submission 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 Donohue, 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 Eelsey, sub. 32, p. 1).

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 or the services of an overseas 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 (for example, fewer independent bookstores may be viable), again to the detriment of those consumers who particularly value such retail models. However, these outcomes would reflect a change in publishing and bookselling behaviour that results from the collective preferences of consumers across the market, implying that consumers as a whole would be better off, not worse off.

5.6 Impacts on other sectors

So far in this chapter, the Commission has explored the various ways that Australia's PIRs may affect the books sector. Their removal would most likely result in some contraction of Australia's book production industry, while having mixed effects on booksellers, and enhancing the purchasing power of consumers.

The expansion in the level of activity within the books production industry over recent decades, partly as a result of the 1991 amendments to the PIRs, will have had diffuse effects on many activities and industries across the economy. Without the restrictions and the upwards 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 will have attracted and held productive resources, notably skilled labour and capital, that have thereby been unavailable for use in other industries.

5.7 Net resource flows

From an economy-wide perspective, many of the benefits and costs arising from the operation of the PIRs that have been identified in this chapter are offsetting, and represent a transfer of resources principally from consumers, booksellers and people in other industries to book producers. In particular, the higher returns to copyright holders consequent upon the PIRs come, in the first instance, at the expense of booksellers and, in the second instance, at the expense of consumers. Thus, they do

not in themselves represent a net benefit to society, just as the costs to booksellers and consumers do not represent a net cost to society.

However, leaving aside (until chapter 6) the unpriced cultural benefits associated with the PIRs, there are two categories of market effects that do not ‘wash out’.

First, 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. Although profit incentives, in the long run, provide an incentive for firms to introduce productivity improvements, these incentives in the short to medium run may be dulled by the operation of the PIRs. 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 (see, for example, PC 2005, chapter 4).

Second, because the PIRs are likely to raise the price of foreign-authored books as well as Australian-authored books, there is a leakage of income 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 subsidise not only Australian copyright holders but also foreign copyright holders.

The Commission has sought to gauge the extent of this leakage using information from Nielsen BookScan and other sources (box 5.7). While precise data are not available, preliminary estimates by the Commission indicate that, for every dollar of assistance that the PIRs provide to local authors and publishers in the trade sector, a broadly similar amount will flow to foreign authors and publishers. (Data are not available that would allow the equivalent calculation for the educational books sector.)

The actual quantum of this leakage will depend partly on the extent to which the PIRs raise prices in Australia. It will also depend on the extent to which some of the initial increase in returns to copyright holders is dissipated in the form of higher costs, for example for printing or freight to meet the requirements of the 30 day rule. As discussed in chapter 4, the Commission has not attempted to put a figure on these, and so has not put a figure on the quantum of the leakage.

Box 5.7 Preliminary estimates of the income leakage

Though the Commission has not sought to estimate the quantum of the income leakage to foreign copyright holders, its importance can be gauged in a relative sense by looking at the share of the higher returns allowed by the PIRs that flows overseas.

As a first step, the Commission checked the nationality of the authors of Australia's top 5000 trade sales in 2007-08 (worth around \$670 million), as captured by Nielsen BookScan, using a variety of databases and web-searches. Foreign-authored works were found to account for more than 60 per cent of the value of these sales.

The Commission then estimated the share of the foreign-authored works that had met the requirements of the 30 day rule and thus were formally protected by the PIRs. It checked publication dates against matching titles that appeared in the BookScan records for the top 5000 UK sales and the top 5000 US sales (for each of the fiction, non-fiction and children's categories). On this basis, 42 per cent (by value) of foreign-authored sales were found to be of titles that had complied with the 30 day rule. (This figure excludes a significant number of foreign-authored titles for which there was insufficient information to determine whether they had complied.)

On this basis, for every dollar of sales accruing to the Australian-authored works in the top 5000 trade sales in 2007-08, more than 60 cents would have accrued to those foreign-authored works that were clearly PIR-protected (calculated as the share of foreign authored sales multiplied by 0.42 and divided by the share of locally authored sales).

However, this approach is likely to underestimate the actual income leakage for two reasons:

- Firstly, as mentioned in chapter 4, some foreign-authored books that are not directly protected by the PIRs might still receive an indirect pricing benefit from them.
- Secondly, a sizeable proportion of Australian-authored works do not have export editions and thus receive no direct benefit from their PIR-protected status.

If, for example, half of the Australian titles were excluded from the calculation on the basis that they did not directly benefit from PIR-protection, the share of assistance to copyright holders that leaks off-shore would be closer to 60 per cent, meaning that for every dollar of support for the local industry more than a dollar would flow to overseas authors and publishers.

Source: Appendix E (forthcoming).

6 Cultural and related impacts of the parallel import restrictions

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 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 educational and social benefits through improving literacy, increasing knowledge and enhancing interaction.
- The cultural value that people gain by reading books is likely to be largely reflected in consumers' 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 any government support for the industry.
- To the extent that the Parallel Import Restrictions (PIRs) increase returns to publishers and authors they provide incentive for the creation of additional Australian books, increasing cultural benefits to Australia.
 - But the unpriced 'externality' component of these cultural benefits is unlikely to be large, and PIRs do not target the cultural value of books effectively.

Books differ from many other 'everyday' consumption items in that, in addition to the enjoyment, knowledge and other benefits received directly by the book purchaser, the reading of the 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.

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 the broader benefits to the community arising from books, and explores the extent to which the Parallel Import Restrictions (PIRs) are a good means of capturing the policy-relevant component of them.

6.1 Cultural benefits

The aggregate cultural value of books

The concept of cultural value has been applied to 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 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.

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)

Many of these aspects of value can also arise from 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 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.

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)

(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 or themes — 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 themes 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 suggested 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, 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.

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.

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:

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. These are compromises we make in order to be published in the US, and to communicate specifically with US readers, but for Australian readers the books can be full of jarring references that feel un-Australian (in the literal, and not overused, sense of the word) ... 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)

... when one of my books sells into the American market, my publishers are required to change words such as 'footpath' into 'sidewalk' and 'taps' into 'faucets.' (Dianne Bates, sub. 19, p. 1)

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)

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, in some cases, where Australian idiom or terminology are central to the work, 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. (Dr Kim Wilkins, sub. 12, p. 1)

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, preliminary estimates suggest that around 40 per cent of the top 5000 trade books (by value) 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)

Sources of cultural value: creation and dissemination

A component of the cultural value in a good can arise simply due to 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)

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.

However, the Commission considers that the real cultural value of such a community 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 arises 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. (Joint Submission ADA, ALCC and ALIA, sub. 252, p. 3)

The relationship between cultural value and market value

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 of to the community, and its market value, can lead to insufficient (or excessive) production and consumption. This section explores the relationship between the cultural value and market value of books.

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 because they potentially embody cultural value or may be culturally enriching to read. This value would be reflected in the price they are willing to pay for different books. By doing so, consumers effectively 'internalise' a proportion of the cultural value of the book, as each purchase provides a return to the creator of the cultural content.

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 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)

The cultural externalities of books

While much of the total cultural value of a book will therefore be reflected in its market value, there is also likely to be a component that is not. In particular, where one person’s purchase and consumption of a book generates benefits for others (aside from the author, publisher etc, 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 costs) of activities that provide the strongest rationale for governments to support (or, in the case of external costs, discourage) activities.

Some externalities have direct and obvious impacts. Pollution from a factory affecting nearby residents is one example of an external cost. Conversely, equipping one’s 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, the benefits of intervention will potentially outweigh its costs.

The cultural externalities that arise from the consumption of books are likely to operate in much more subtle, intangible and diffuse ways. The main way 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)

Equally, books that have the effect of promoting intolerance across groups could in theory generate external costs rather than external benefits. And it should be recognised that books and literature are but one way by which social norms and ideas 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.

Beyond their impacts on social capital, 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 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. Such impacts are not likely to be significant in most cases.

Overall, while books and literature on the whole provides a range of cultural benefits to Australians, a narrower range of these benefits represent a genuine source of cultural externalities. Given a well developed market for books in Australia, most of the cultural value of books is likely to be internalised by those who buy and read books, and as such will be reflected in the book’s market value.

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.)

Likewise, 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 books are not the only source of such educational benefits, as these can also arise, for example, from (educational) television programming and, increasingly, from the internet.

6.3 Effects of parallel import restrictions on external benefits

In addition to the market impacts of PIRs discussed in the previous chapter, the support they provide also impacts upon the level of external benefits generated by books in Australia. In this context, PIRs may have some impacts that overlap with existing government programs designed to promote culturally valuable literature and reading, such as Australia Council grants and educational programs (chapter 3).

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 the publication of authors whose works might otherwise be marginal commercial propositions — and as such their removal would threaten these works and the cultural value they embody (box 6.3). To the extent that such works generate external benefits for the community, these externalities would likewise be diminished in the absence of PIRs.

The cultural benefits from the creation of additional literary works that PIRs sustain could, in theory, be somewhat offset by the higher prices they give rise to. These could result in somewhat lower overall sales than would otherwise be the case, thus potentially reducing the dissemination of the ideas contained in the books. However, while consumers are likely to take price into account when choosing between different booksellers and different titles, overall demand for books appears to be relatively unresponsive to changes in price (chapter 2). Further, as discussed in appendix B, the Commission considers that the PIRs are unlikely to have much impact one way or the other on overall literacy levels through their effects on the affordability of books.

On the issue of price, Kinokuniya Bookstores of Australia argued that any price differences (and prevailing exchange rates) may drive Australian readers to foreign online stores:

... 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. (sub. 6, p. 1)

However, this effect would be minor and could be offset to the extent that the PIRs lead to more Australian-authored works being on display in Australian stores.

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)

In sum, the Commission's assessment is that the effects of the PIRs on the cultural and educational externalities associated with books is positive (although it is a separate question as to whether the quantum of support they provide through their price raising effect on individual purchases is at least matched by the size of the external benefits to the broader community).

As a means of targeting external benefits of this nature, 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 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 hence readership, not from existence *per se*.

That said, it is true that PIRs do not differentiate according to the cultural value of particular books. Hence, a best seller of limited cultural value will receive equivalent assistance to a best seller of high cultural value.

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 direct protection from the PIRs. Second, as discussed in chapter 5, 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. 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, it is the externality component of this value that is the appropriate focus of any government support for the books industry. Most of the benefits of buying and reading books are internalised by consumers and reflected in the market price of their purchase. Hence, the Commission judges the externality component to be policy-relevant, but unlikely to be large.

Moreover, as a policy instrument, the PIRs have some limitations for targeting cultural and educational externalities associated with books. These 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.

7 Policy implications

Key points

- The Parallel Import Restrictions (PIRs) for books provide benefits to publishers, authors and also printers, but impose costs on consumers. Most of these benefits and costs stem from the upward pressure on book prices in at least some segments of the market (chapter 4).
- While most of the direct benefits and costs are offsetting, there are ramifications for community wellbeing.
 - The restrictions have efficiency costs, including a transfer of income from Australian consumers to overseas authors and publishers (chapter 5).
 - At the same time, the PIRs are a vehicle for supporting the ‘unpriced’ cultural and related benefits for the community from some local writing and publishing activity (chapter 6).
 - Though the Commission judges that these cultural externalities are policy relevant, they are not large.
- The current PIR regime is unnecessarily costly for consumers and is not a particularly well targeted mechanism for supporting cultural externalities.
- While supporting cultural externalities through an explicit subsidy regime would avoid a leakage of support overseas, various administrative costs and design issues would detract from its efficiency and effectiveness.
- Abolishing the PIRs, and relying on consumer demand for Australian stories and narratives to deliver a sufficient level of local writing and publishing activity from the community’s point of view, while having some merit, would not be prudent at this time.
- The Commission’s preferred approach is to liberalise the PIR regime to increase competition in those parts of the market where the restrictions put most upward pressure on book prices and/or where the cultural externalities are less likely to be significant. To this end:
 - PIR protection should only apply for 12 months from the date of first publication of a book in Australia
 - the 7/90 day resupply rule should be abolished
 - booksellers should be allowed to overtly offer an aggregation service for individual import orders under the single use provisions.
- The outcomes of these changes should be reviewed five years after implementation, supported by revised and updated information from the ABS on the books industry and market.

7.1 The policy balance sheet

A summary of the benefits and costs of the PIRs

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 (though the Commission was told that commercial quantities of Australian editions of titles first published overseas are not always available to booksellers within the 30 day period).

Accordingly, most of the key impacts of the PIRs stem from the upward pressure placed on book prices in at least some segments of the market.

As detailed in chapter 5, the PIRs assist activity and employment in the local books industry in several ways.

- By increasing the monetary returns available from local publishing activity, the restrictions enable higher overall output of locally published titles, with flow-on benefits for Australian authors and the printing industry.
- They enable local publishers to secure higher prices where rights to the Australian market are sold overseas.
- They may also enable publishers to invest more heavily in developing and promoting new authors without increasing their overall risk exposure.

However, the higher prices for a significant number of books that underpin these benefits are ultimately paid for principally by consumers, with potential flow-on effects for activity and employment elsewhere in the economy. In particular, any increase in overall consumer expenditure on books will reduce spending on other goods and services.

In reflecting the two sides of the ‘price raising coin’, to a considerable extent, the preceding benefits and costs are offsetting. In effect, they involve a transfer of income between different groups and sectors in the community.

But the PIRs do have effects that do not ‘wash out’ and which therefore impact on overall community wellbeing.

On the one hand, as a consequence of increased local publishing activity and thereby a greater number and volume of locally authored books, there is greater portrayal of Australian events and stories through Australian eyes. This has a range of social, educational and other benefits.

Most of these ‘cultural’ benefits will be reflected in the prices people are prepared to pay for books and the sorts of books that they purchase. But as discussed in chapter 6, some are ‘unpriced’ and represent a positive externality for the community. PIRs are a means — though not the only means — of securing such externalities.

On the other hand, PIRs involve a leakage of income to overseas entities owning the copyright on foreign works that are published in Australia and who therefore benefit from the Australian restrictions. As detailed in chapter 5, the Commission estimates that for every dollar of support that the PIRs provide to local production of trade books, a similar amount will flow overseas.

A further demerit of the PIRs is that, in lessening the competitive pressure on the local books industry, they may contribute to inflated cost structures and other inefficiencies in the supply chain. It is also likely that some of the additional resources attracted into the books sector by the restrictions would have generated more valuable market output for the community had they been used elsewhere (chapter 5).

Issues of magnitude

Though the nature of the benefits and costs of the PIRs is relatively straightforward, judging their magnitude, both absolutely and in a comparative sense, is much more difficult. There are several reasons for this, including: the lack of contemporary and comprehensive data on the books market and the local industry (chapter 2); the methodological and other challenges in establishing the degree of upward pressure on book prices that ensues from the restrictions (chapter 4); and the difficulties of ‘valuing’ the cultural benefits attaching to Australian stories and narratives, and more particularly the externality component of those benefits (chapter 6).

Also, whatever the current magnitude of the benefits and costs, ongoing technological development and changes in consumer preferences may reduce their significance in the future. Increased access to, and use of, digital texts — especially in the education area — could be one such example.

Nonetheless, at least in some segments of the books market, the price raising effects of the PIRs — and thereby their benefits and costs — appear to be material. In particular, as discussed in chapter 4, absent the restrictions there would be:

- opportunities to ‘cherry-pick’ the (PIR-protected) US and UK markets for titles that were cheaper than in Australia, including but not only through the importation of ‘remainders’
- similar scope for selective importation from Asia, especially in the educational books market. Also, over the longer term, if wholesalers were to establish in the region that could provide a ‘sale or return’ option to Australian booksellers at a competitive price, then more widespread opportunities for lower cost sourcing of books could become available.

In addition, as recent experience illustrates, book price relativities across countries are significantly influenced by movements in the exchange rate. Thus, a future increase in the value of the Australian dollar would, in the absence of the PIRs, add to the opportunities to source books more cheaply from overseas.

More generally, were such opportunities not to exist, then the PIRs would not be having a substantive effect, whether for good or bad, on consumers, the books industry or the community more broadly.

The key policy questions

In the light of the benefit-cost balance sheet set out above, the case for the longer term retention of the PIRs — in either their current or modified form — must be founded principally on the cultural externalities that they generate for the community. In the absence of significant externalities, and with core copyright protection still in place to provide incentives for creative endeavour per se, the leakage of income overseas and the other efficiency costs of the restrictions would provide a persuasive case for their outright abolition. Though a concern to avoid disruptive adjustment in the local books industry would militate against precipitate removal, the support that the PIRs provide to output and activity in the industry is not of itself a reason to maintain the restrictions in perpetuity.

Moreover, PIRs are not the only way of supporting culturally valuable Australian writing and publishing activity and the externalities it generates. Thus to justify longer term retention, they must also be the most efficient and effective means of delivering this support.

That said, the information gaps and uncertainties noted above mean that such assessments are far from easy. 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 a cautious approach to reform.

With these considerations in mind, section 7.2 explores a range of policy options ranging from retention of the PIRs in their current form, through to abolition of the restrictions with reliance on market forces to adequately address the community's cultural needs in this area.

Matters that are not central to the policy calculus

However, prior to this assessment, it is important to rule out some matters raised by participants that are *not* relevant to the comparison of these policy options.

Support for regional development

The Commission recognises the regional significance of parts of the books industry. In particular, absent PIRs and without some alternative support mechanism, printing activity and employment in certain regional areas could be significantly affected (see chapter 5). And given their smaller economic base, it may be more difficult to readily absorb those displaced resources into other activities.

But it is not the role of PIRs to operate as a regional development/support mechanism. Any public support of this nature should be provided explicitly and transparently, rather than by a private, implicit, tax on book consumers.

The policy stance on PIRs in other countries.

The argument that Australia should not sacrifice its authors and publishers on the altar of freer trade while other countries maintain similar 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 (see box 7.1).

In the Commission's view, it is hard to see why the arguments underpinning that approach would not apply with equal force 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.

Box 7.1 The relevance of policy settings 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 that:

... 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)

It is obviously the case that Australia's well-being is influenced by policy settings in other countries. That is why, for example, Australia has been a strong advocate for continuing multilateral reductions in trade barriers.

But when dealing with a particular policy issue, it will generally be in the community's best interest to take the policies of others as given and 'optimise' accordingly — that is, get the best value from the resources at Australia's disposal subject to any constraints arising from those other policies. Importantly, in having a relatively small books market, Australia is unlikely to be able to use its PIR policy settings as negotiating coin to extract changes in similar arrangements in other countries that are detrimental to the well-being of the Australian community.

Other considerations

Other considerations raised by participants which are not relevant to the central policy issue in this study include:

- reducing Australia's carbon footprint
- the GST treatment of books
- combating piracy
- promoting higher literacy rates.

These matters are discussed further in appendix B.

7.2 The policy options

Having regard to the benefits and costs of the PIRs, and their likely significance, there are four broad policy options that warrant investigation:

- Option 1 — retain the restrictions in their current form.
- Option 2 — abolish the restrictions and rely on consumer demand for Australian stories and narratives to sustain a broadly appropriate level of local writing and publishing activity — in effect, allow the Australian community to directly determine how much of this activity is undertaken.
- Option 3 — abolish the restrictions and target cultural externalities through an explicit subsidy.
- Option 4 — liberalise the restrictions so as to further increase competition and thereby put downward pressure on book prices, while still preserving some support for local writing and publishing activity in recognition of the externalities that some of this activity generates.

Option 1 — the status quo

In putting upward pressure on book prices in parts of the market, the current PIR regime has material costs for book consumers. Moreover, a significant part of this impost on consumers flows to overseas authors and publishers, rather than supporting local publishing and writing activity and the cultural externalities that some of this activity generates.

Also, that part of the impost on consumers which does flow 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 (see chapter 6).

The Commission recognises that the PIRs provide certainty to local publishers to invest in the production and marketing of new titles, including those by Australian authors. But even from this perspective, the current provisions seem overly restrictive. As elaborated on below, in the Commission's judgement, this particular outcome could be achieved with a considerably shorter period of PIR protection, thereby avoiding much of the current upward price pressure in the back list market and reducing the leakage (in dollar terms) of support overseas.

The Commission therefore concludes that retention of the PIRs in their current form would not be appropriate.

Option 2 — abolish the PIRs

While Australia derives considerable cultural benefits from local publishing and writing activity, the significance of the externality component of these benefits is much less clear. As discussed in chapter 6, to the extent that Australians value the depiction of their culture in literary works and are prepared to pay for it, then the true cultural externalities may be modest. Yet it is these externalities — and not the overall value of the outputs of the local books industry — which provide the basis for government support in general and could provide a basis for the PIRs.

Also, Australian governments already provide direct financial support to local authors and publishers in recognition of the externalities that some of that activity generates (see chapter 3). And a sizeable number of locally authored and published works — namely those that are sold only in Australia — do not directly benefit from the PIRs. Given this, the question arises as to whether the PIRs should immediately be abolished.

However, while having some merit, abolition at this stage could also entail some significant costs and risks.

- On the evidence that the PIRs have placed upward pressure on book prices in parts of the market and hence assisted activity and employment in the local books industry, immediate abolition could have material adjustment costs. Though the benefits of reforms persist over the long term, such adjustment costs must be factored into the reform calculus (see PC 2000).
- Were it subsequently judged that the ensuing contraction in activity in the industry, and any associated loss of cultural externalities, had been excessive, it could take a considerable time to reverse. A flourishing Australian books industry has taken three decades to achieve and an industry of sufficient scale could not be recreated overnight.

In the light of these considerations and the more general uncertainty about the benefits and costs of the PIRs, abolition of the restrictions at this juncture would not, in the Commission's view, be prudent.

Option 3 — the subsidy alternative

As the Commission foreshadowed in its Issues Paper for the study, the main alternative to the PIRs for supporting cultural externalities would be an explicit taxpayer subsidy to publishers or authors — either as an increment to existing subsidy support, or as a self-standing mechanism.

There is clearly considerable opposition amongst authors and 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, in fact, 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.

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. Also, the subsidy approach has been used in other countries. For instance, the Australian Publishers Association (sub. 244, pp. 54-55) referred to the CAN\$30 million a year paid under Canada's Book Publishing Industry Development Program which, in conjunction with a PIR regime, seeks to facilitate 'choice of and access to Canadian-authored books that reflect Canada's cultural diversity.'

The potential advantages of subsidies

As an alternative to PIRs, explicit subsidies have some 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 and authors, thereby avoiding or reducing the leakage of support overseas that occurs under PIRs.

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- 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 — though in spanning most parts of the community, book consumers also provide a broad ‘tax base’ under the PIR approach.

The practical disadvantages

Though the subsidy approach offers the potential to target the cultural externalities more precisely than the PIRs, in practice, various administrative costs and design issues would detract from its efficiency and effectiveness.

Distributing funding via the sort of ‘beauty contest’ used to allocate current subsidies from the Australia Council for the Arts would require case-by-case assessment of applications for support. Even with funding guidelines, this would be time consuming and resource intensive and involve considerable uncertainty for potential recipients — both in relation to the likelihood of receiving support and the amount of that support.

Pre-specification of eligibility criteria would reduce the administrative impost and increase predictability for potential recipients. But these benefits would come at the cost of less capacity to target support to the externalities (see box 7.2).

A further practical consideration 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)

That said, 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.

Box 7.2 How might a subsidy alternative be configured?

To test the practicality of a subsidy alternative to the PIRs, the Commission explored some of the design issues that would have to be addressed.

Should the subsidy be paid to publishers or authors?

The broad impacts of the subsidy would be unlikely to depend greatly on whether the subsidy was paid to publishers or authors. Though 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. Similarly, if authors received the subsidy, many would presumably have to share their payments with a publisher to secure a publication contract.

This suggests that this payment choice would be dictated largely by comparative administrative and compliance costs. A potentially decisive consideration here is that routing payments through larger publishers would allow for the aggregation of subsidy claims in respect of individual titles.

On what basis should the subsidy be paid?

Any attempt to precisely target cultural externalities would have to involve a 'beauty contest' with all of the associated problems and uncertainties. More practical alternatives would be a one-off payment at the time an Australian author signed a contract with a publisher, or a payment linked to sales. But such output-based subsidies would not differentiate according to the cultural value of individual titles and thus, in respect to the support provided for Australian-authored works, would be little different from the PIRs.

Given that the cultural value of Australian works depends significantly on readership levels, a sales-based subsidy would *prima facie* be preferable to a one-off payment. However, over time, an 'open-ended' sales-based subsidy would see an ever increasing number of titles eligible for support, and would entail very small payments to a growing number of back list titles. Thus higher per unit compliance costs would progressively erode the value of the support provided, suggesting that any sales-based subsidy would have to be both time limited and subject to a minimum sales threshold.

Which publishers should be eligible?

If leakage of subsidy support to overseas entities is to be avoided, then subsidy payments would have to be limited to locally authored books published in Australia. Further, to limit administrative and compliance costs, it would probably be necessary to restrict eligibility for a subsidy to titles published by larger publishers. Yet this would mean that possibly important cultural externalities arising from the activities of self and very small publishers would not attract support.

How much support should be provided?

In principle, the subsidy would be funded to achieve a level of output of locally authored works where the value to the community of an additional 'unit' of externality was equal to the additional subsidy required to secure it.

But given the information gaps and the difficulties of putting orders of magnitude on cultural values/externalities, in practice, a less precise metric would be required. Hence under- or over-shooting of support for cultural externalities would be inevitable.

Two further considerations

Based on the preceding factors alone, the decision on whether or not to replace PIRs with a subsidy regime would be finely balanced. Notwithstanding the design compromises that would be required to render it practically workable and administratively efficient, the approach would still provide a means to avoid the leakage of income to overseas authors and publishers that occurs under the PIRs.

However, two other considerations militate against adoption of the subsidy alternative at this time.

- First, given the uncertainty about the overall price raising impact of the PIRs, setting a subsidy rate even under a relatively simple sales-based regime would be very problematic.
- Second, implementing a new subsidy regime would in some senses validate ongoing support for cultural externalities beyond that provided through other funding programs. As indicated earlier, if Australians value the depiction of their culture in literary works and are prepared to pay for it, then such additional support may prove to be largely unnecessary.

Option 4 — liberalise the PIRs to increase competitive pressures

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 and confident than before. Indeed, while the industry was initially very cautious about the reforms — with some sounding warnings about the impending demise of Australian literature — for the most part, it is now highly supportive of the changes and can see scope to further progress them in some areas.

The Commission can similarly see considerable scope for extending the liberalisation process. Doing so could reduce the adverse effects of the current arrangements while still preserving support for the cultural externalities attaching to some local publishing and writing activity. Such a reform approach would also

avoid many of the uncertainties and transitional costs inherent in immediate abolition of the PIRs or in supporting cultural externalities entirely through direct subsidies. And it would not preclude either of those reform approaches in the future were clearer supporting evidence for them to emerge.

Participants suggestions for modifying the current PIRs

Booksellers proposed a number of changes to the PIRs, including:

- shortening the 7/90 day and 30 day rules
- removing these rules completely and allowing free importation of foreign editions of a book at anytime an Australian edition is not available
- supplementing the restrictions with a price cap arrangement that limits the extent to which prices for PIR-protected titles could be set above those in ‘comparable’ overseas markets (see box 7.3).

A number of authors and publishers also supported a shortening of the 7/90 day rule. More generally, the Victorian Government (sub. 270, p. 9) suggested that particular attention be paid to reforms targeted at specialised segments of the market where competition is low and costs to consumers are therefore higher, but where the benefits of greater Australian-authored content are not substantial.

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 the 7/90 day rule would represent little more than regulatory catch up with the reduction in supply timeframes made possible by technological and transportation developments. Moreover, provided local publishers complied with the shorter timeframes, there would be no additional competitive pressure on book prices.

A Canadian-style price cap arrangement would have some constraining effect on average book prices. That is, while preserving scope for the prices of PIR-protected books to be lower in Australia than overseas, it would limit any upside difference.

But the costs of implementing such an arrangement would be significant.

- The same sort of methodological issues that complicate price comparisons would arise in this context as well, including: which comparator countries should be used as price reference points; what the allowable price premium in Australia should be; whether the cap should apply at the wholesale or retail level; how the cap should be adjusted in the light of changes in exchange rates; and how it should account for differences in preferred formats across countries.

-
- Presuming these could be resolved, it would require publishers or retailers (depending on where in the supply chain the cap was imposed) to notify overseas prices to the designated regulatory body, or for that body to collect this information independently. And that regulatory body would then need to monitor compliance with the price cap.

As the Australian Publishers Association observed, 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)

Box 7.3 Modifications to the PIRs: some suggestions from participants

Shortening the 7/90 day and 30 day rules

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, 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)

Similarly, 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)

And while for the most part local authors, publishers and printers strongly endorsed continuation of the 30 day rule, some booksellers suggested that this too could 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)

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:

Continued next page

Box 7.3 Continued

- 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 additions and their prices but not stock them where an Australian edition was available.

Readings/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 supplementary price cap arrangement

Drawing on the PIR regime applying in Canada, some booksellers further advocated the introduction of a cap on the amount by which the Australian prices of titles protected by PIRs could exceed those of foreign editions in overseas markets. Though noting that in Canada the price cap only applies to imported editions, Redgroup Retail argued 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)

The Commission's preferred approach

Like the Victorian Government, the Commission considers that the next phase of the liberalisation process should focus on those parts of the books market where the upward pressure on prices from the current PIRs is ostensibly the highest and/or the cultural externalities are less likely to be significant. Based on the evidence and analysis in earlier chapters, this in turn suggests an emphasis on increasing competitive pressures in the back list component of the trade books market and in the market for educational books more generally.

- For the trade books back list, the competition from discount department stores that often significantly constrains prices for front list titles is largely absent. And high per unit freight costs limit any downward pressure on back list prices from

the single use provisions or the scope for consumers to bypass the PIRs by sourcing directly from overseas internet booksellers.

- For some categories of educational books, there is seemingly considerable potential to source better value-for-money editions from overseas. A liberalisation of the current restrictions that provided greater opportunities to do so could therefore be of significant benefit to students and other users. And for some subject areas (for example, physics), such overseas sourcing would seemingly have few negative cultural impacts.

The Commission explored a range of liberalisation options that either alone or in conjunction with other measures might increase price competition in these parts of the market. After rejecting some (see box 7.4), it is proposing the following package of changes to the existing PIR provisions.

A shortened period of PIR protection

The Commission proposes that the restrictions on parallel imports should apply for only 12 months from the date of first publication of a book in Australia. Thereafter, parallel importation would be freely permitted.

Limiting the period of PIR protection to 12 months, rather than providing it for the full term of copyright, would have several advantages.

- It would continue to provide local publishers with the certainty to invest in the development of new manuscripts knowing that this investment, and that entailed in marketing and promotion, would not be undermined by parallel imports during what is generally the peak sales period.
- This period of protection would coincide with the time when price competition in the trade books market is at its highest and hence when the price raising impacts of the PIRs are likely to be lowest.
- Conversely, the back list — where prices are currently often less competitive — would be more open to the international market, with the downward pressure on prices in turn providing some constraint on the prices that could be charged for front list titles.

In arriving at this 12 month period for PIR protection, the Commission was cognisant of the desirability of retaining an incentive for Australian publishers to invest in works by new local authors, beyond that based on the immediate commercial value of those works. Though the current stock of Australian works and the new works of established writers will continue to be an important source of cultural benefits in the years to come, new authors will have an important role to play in reflecting future changes in cultural norms and values.

Box 7.4 Some other liberalisation options rejected by the Commission**Remove PIR protection for educational books**

This option would evidently increase the scope for price competition across the entire educational books market. To the extent that the cultural externalities in significant segments of this market appear to be limited, and the opportunities for low cost sourcing from overseas substantial (see text), there would be the prospect of a net gain for the community.

However, the boundary between educational and other books is often far from easy to delineate, with many books both read for pleasure and used in an educational context. Books prescribed for literature studies are an obvious example. Also, a significant number of educational texts embody a strong cultural component, with learning assisted by the presentation of ideas and arguments in Australian settings.

These latter considerations suggest that a PIR arrangement that excluded some or all educational texts would be a blunt and practically difficult reform approach.

Limit PIR protection to Australian authored books

The option of limiting the restrictions to books authored in Australia — as distinct from published in Australia — was raised in some of the early inquiries into the PIRs. As a means of avoiding the leakage of income from Australian book consumers to foreign publishers and authors, the approach has intuitive appeal.

However, while a 'live' option at the time of those early reviews, it has now been effectively ruled out as a generalised approach by a clause in the Australia-US Free Trade Agreement preventing discriminatory treatment in regard to Australia-US trade.

Though back list titles can sometimes return to the front list — if for example, an author wins a major literary prize, or if a film version of a book revitalises demand — in most cases, the bulk of the returns to publishers will come from sales in the months following first release. Thus although a one year period of PIR protection may seem short in the context of the current copyright term for published works, in the Commission's judgement, it would not excessively diminish current returns and thereby incentives for publishers to invest in new authors. And while a longer period could augment those incentives, this would come at a cost to consumers in terms of somewhat higher prices for many back list titles and less flow-on price pressure to the front list. In any event, if a publisher judged that protection for a book from parallel imports for longer than 12 months was particularly important, at the cost of delaying the returns from overseas sales, it could achieve this by holding back the overseas release for an appropriate period.

The Commission further notes that consideration could be given to limiting the 12 months of PIR protection to the literary work embodied in an eligible book, with no formal PIR protection for the published edition. Given the licensing of the literary

copyright by the author to the publisher, this would seemingly be unlikely to have any significant practical ramifications during the 12 month period. However, it could remove any scope for publishers to ‘game’ the proposed new arrangements — through the re-release of books in a slightly modified form after the 12 month period of PIR protection had expired.

Abolition of the 7/90 day rule

As at present, to be eligible for the shortened period of PIR protection, the Commission is proposing that an Australian edition would have to be made available within 30 days of the date of first publication overseas. ‘Availability’ in this context should be defined in terms of the ability of a publisher to supply a commercial quantity of a book to the market.

However, if for whatever reason the local edition became unavailable during the subsequent 12 month period, then parallel importation should be freely permitted until local supply was re-established (or the expiry of the 12 month period allowed for generalised parallel importation).

The effect of this change would be to render the 7/90 day rule obsolete — though in reality, the delays involved in importing copies of a book if a local publisher could not supply a local edition would continue to provide the publisher with a ‘period of grace’. Suffice to say that the change would better align this aspect of the PIR regime with contemporary supply time frames and thereby maintain pressure on local publishers to make books available in a timely way.

Aggregation of orders under the single use provisions

The final component of the Commission’s proposed reform package is to allow booksellers to overtly offer an aggregation service for individual import orders under the single use provisions. At present, in response to customer requests, booksellers can import individual copies of books that would otherwise be PIR-protected. But whether they can aggregate such orders is unclear. In practice, few do.

In the Commission’s view, allowing overt aggregation would bring additional and desirable competitive pressures to bear in parts of the market. In essence, by reducing unit freight costs, aggregation would increase the attractiveness of the single use provisions as a means of acquiring books — often in areas where the ‘Australianess’ component is limited and the overseas edition is a more direct competitor. Thus it could be of particular benefit to students, with teachers and lecturers able to order text books on their collective behalf and thereby take advantage of opportunities to purchase cheaper or otherwise better value for money

overseas editions. Also, there may be some scope for book clubs to similarly aggregate orders. In turn, the greater scope for consumers (or their agents) to employ the single use provisions could marginally increase the competitive pressure on local publishers, leading to some further small price benefits for consumers.

Further review

While the reform package that the Commission is putting forward for consideration would expose parts of the books market to greater competitive pressure, it does not see these changes as necessarily being the end point of the progressive opening of the market. As indicated earlier, the cultural externalities generated by local publishing and writing activity may be quite modest. If this is the case, and given both the costs of the PIRs and the direct financial support that is already provided to the industry in recognition of the cultural value of some of its activities, then there could be a net benefit to Australia from abolishing the restrictions.

Mainly because of the uncertainty about the significance of the impacts of the PIRs, how the industry would respond to their abolition, and how large the accompanying adjustment costs would therefore be, the Commission is not recommending this course of action at this stage. However, were better information on the industry to become available, some of those uncertainties could be removed. Indeed, an ancillary benefit of the Commission's proposed reform package is that the responses to the more competitive market environment are likely to shed some light on the benefits and costs of further or complete liberalisation of the market at a later date.

Accordingly, the Commission also proposes that the outcomes of the new arrangements be reviewed five years after their implementation. Essential questions for that review would include whether:

- the liberalisation ensuing from this study has sufficiently reduced the cost to consumers of the PIRs relative to the cultural externalities supported by the restrictions
- further liberalisation would demonstrably put important sources of cultural externalities at undue risk
- if so, whether an alternative instrument, such as some form of subsidy, could cater for these particular externalities more effectively and efficiently.

The review would also need to consider the implications of technological and market developments over the next five years for the books industry and for the future of the PIRs.

Finally, to assist that review, the Australian Bureau of Statistics should:

- as soon as possible, undertake a revised version of its 2003-04 survey on the books industry and market, having regard to:
 - the various information gaps and interpretation problems identified in chapters 2 and 4 that have hindered assessments in this study
 - the data held by other agencies, such as the National Library, that may help to address some of the information gaps
- update that revised survey prior to the commencement of the proposed review.

Appropriate resourcing should be made available for this task.

DRAFT RECOMMENDATION 7.1

Australia's Parallel Import Restrictions (PIRs) for books should be modified as follows.

- *PIRs should apply for 12 months from the date of first publication of a book in Australia. Thereafter, parallel importation should be freely permitted.*
- *If a PIR-protected book becomes unavailable during this 12 month period, then parallel importation should be freely permitted until local supply is re-established, or the expiry of the 12 month period allows for generalised parallel importation.*
- *Booksellers should be allowed to overtly offer an aggregation service for individual orders of imported books under the single use provisions.*

All other aspects of the current PIR arrangements should continue unchanged, including the 30 day rule.

DRAFT RECOMMENDATION 7.2

The new arrangements should be reviewed five years after implementation. To assist that review, the Australian Bureau of Statistics should, as soon as possible, undertake a revised version of its 2003-04 survey 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 this revised survey prior to the commencement of the review.

APPENDICES

A Public consultation

This appendix details the progress of the study, and lists the organisations and individuals that have participated so far.

The Commission advertised the study in national and metropolitan newspapers following receipt of the terms of reference on 13 November 2008, and an initial circular advertising the study was distributed to interested parties. The Commission released an Issues Paper on 26 November 2008 to assist participants in preparing their submissions. The 272 submissions received by the Commission prior to the release of this discussion draft are listed in table A.1.

In addition, the Commission met with a number of industry stakeholders, including authors, publishers, printers, booksellers, peak industry associations and government departments. A list of those meetings is at table A.2.

Participants are invited to send any additional submissions in response to this discussion draft to the Commission by 17 April 2009. The Commission will hold roundtables to discuss the analysis and draft recommendations in April 2009, prior to delivery of the final report to the Australian Government by 13 May 2009.

The Commission would like to thank all those who have contributed to the study so far.

Table A.1 Submissions received

<i>Participants</i>	<i>Submission no.</i>
Abela, Deborah	35
Abidi, Azhar	162
Aesop's Attic Bookshop	133
Allen and Unwin	214
Allen, Pamela	09
Allkotes Pty Limited	92
Antoniou, Daisy	111
Association of American Publishers	156
Australian Booksellers Association	172
Australian Competition and Consumer Commission	260

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Table A.1 continued

<i>Participants</i>	<i>Submission no.</i>
Australian Copyright Council	249
Australian Industry Group	272
Australian Literary Agents' Association	124
Australian Manufacturing Workers' Union	97
Australian Publishers Association	244
Australian School Library Association	228
Australian Society of Authors	70, 118
Backroom Press	213
Ball, Duncan	105
Bartak, Meryl and David	246
Bates, Dianne	19, 93
Bauer, Michael Gerard	186
Becker, R	271
Bell, Gail	259
Black Dog Books	257
Black Inc	113
Blackford, Dr Russell	43
Bongers, Christine	95
Book Industry Training	198
Book Publishers Association of New Zealand	166
Brandl & Schlesinger	262
Braude, Sandra Lee	225
Brian, Janeen	13
Bright Books	251
Britt, Jo-Anne	41
Brooks, Ron	180
Bryson, John	25
Carey, Peter	158
Carthew, Mark	258
Cat MacInnes Illustrations	167
Catherine M. Whittle	116
Cengage Learning Australia	52
Children's Book Council of Australia	71
Ciddor, Anna	235
Clarke, John	195
Clode, Danielle	140
Cole, Darren	04
Collins Booksellers	230

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Table A.1 continued

<i>Participants</i>	<i>Submission no.</i>
Connelly, Graeme	60
Cooper, Michelle	36
Copyright Agency Limited	199
Council of Australian University Librarians	227
Create a Kids Book	224
Croome, Helen	50
Cunningham, Ann	233
Curringa Communications	53
Curtis Brown (Australia)	73
DA Information Services	117, 268
Dalglish, Janette	152
Daly, Joy	81
Davies, Will	30
Davis, Dr Joseph	136
Day, Norie Wah	108
Dennis Jones & Associates	146
Denton, Terry	145
Disher, Garry	24
Doherty, Peter C	237
Donoughue, Peter	08
Dowse, Sara	107
Draper MP, Peter	151
Eagar, Kristy	157
Earls, Nick	17
East Street Publications	121
Eleanor Dark Foundation Ltd	120
Elsey, Lynn	32
England, Katharine	137
Era Publications	54
Evans, Helen	80
Falkiner, Dr Suzanne	94
Faulkner, Carol	177
Fenton, Corinne	83
Field, Judith and Martin	231
Finch Publishing	112
Flanagan, John	98
Flannery, Tim	58
Ford Street Publishing	134
Freeman, Pamela	03

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Table A.1 continued

<i>Participants</i>	<i>Submission no.</i>
Fremantle Arts Centre Press Incorporated	66
French, Jackie	132
Gallagher, Patrick	200
Gervay, Susanne	126
Gleeson, Libby	67
Gleitzman, Morris	85
Graham, Amanda	253
Greive, Bradley Trevor	88
Grenville, Kate	02
Grenville, Kate	68/2
Griffin Press	205
Griffiths, Andy	164
Gwyther, Sheryl	51
Hachette Australia	232
Hamilton, Margaret	174
Hardie Grant Publishing	65
Harlequin Enterprises (Australia)	239
HarperCollins Publishers Australia	269
Harris, Clare	183
Harris, David	159
Hartnett, Sonya	161
Hawke, Rosanne	142
Healy, Kim	210
Herbert, Tim	33
Herrick, Steven	74
Hill, David	229
Hilton, Margot	11
Holfeld, Greg	149
Hooper, Chloe	240
Hornsey, Chris	184
Horrocks, Ian	20
Hudson Publishing	104
Hurst, Elise	187
Hutchins, Elizabeth	128
Inkwell Management, NY	47
Insight Publications	215
Interactive Publications	84
International Publishers Association	242
Irvine, Ian	203

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Table A.1 continued

<i>Participants</i>	<i>Submission no.</i>
J.L. Lennard Graphics	115
James, Ann	234
Jenny Darling & Associates	185
John Reed Book Distribution	23
John Wiley & Sons Australia	169
Johnson, Susan	78
Joint Submission – ADA, ALCC and ALIA	252
Joint Submission – Readings and Gleebooks	226
Jonsberg, Barry	182
Jordan, Toni	26
Jose, Professor Nicholas	241
Kalimeris, Lita	123
Kelly, Vivienne	55
Keneally, Thomas	16
Kennett, David	150
Kent, Jacqueline	171
Kinokuniya Bookstores of Australia	06
Koala Books	196
Krajcar, Eddy	248
Leading Edge Books	254
Ligare Pty Ltd	76
Little Hare Books Pty Ltd	144
Lonely Planet Publications	69
MacDibble, Bren	46
Mace, Erica Jolly	109
Macmillan Publishers Australia	236
Magabala Books Aboriginal Corporation	188
Maloney, Shane	206
Marwood, Lorraine	45
Mary Who? Bookshop	197
Masson, Sophie	72
Mattingley, Christobel	192
May, Lois	07
McGowan, Michelle	176
McGraw-Hill Australia	163
McInerney, Monica	79
McKenzie, Dr Margaret	211
McMullin, Neridah	130
McPherson's Printing	168

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Table A.1 continued

<i>Participants</i>	<i>Submission no.</i>
Mobbs, Barbara	114
Moody, Linda	194
Moorhouse, Frank	103
Morrison, Reg	48
Morrison, Robert D	01
Morrissey, Di	265
Mottram, Maggie and Winkless, Anne	266
Murdoch Books	77
Murphy, Nicole R.	147
Murphy, Sally	125
Musgrove, Marianne	179
Nahrung, Jason	62
National & State Libraries Australasia	264
National Union of Workers – Victorian Branch	267
Neal, Julie	148
Nilsson, Lena	223
Nix, Garth	102
Nunn, Judy	37
Odgers, Sally	202
O'Donnell, Carol	263
O'Flynn, Mark	14
Omnibus Books	173
Opie, Robyn	178
Orr, Wendy	56
Osborne, Dianne	96
Ouston, Elaine	129
Oxford University Press – Australia	42
Page Thirteen	209
Parker, Michael	101
Pascoe, Bruce	154
Pearson Australia	119
Pearson, A	21
Penguin Group (Australia)	212
Phillips, Sylvia	141
Potts, Natalie J E	131
Printing Industries Association of Australia	106
Protectaprint Pty Ltd	153
Public Libraries of NSW – Country	100
QBD The Bookshop	99

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Table A.1 continued

<i>Participants</i>	<i>Submission no.</i>
Queensland Writers Centre	219
Quinn, Elizabeth	59
Random House Australia	193
Random House India	87
ReadHowYouWant	245
Redgroup Retail	175
Reilly, Matthew	57
Richard Smart Publishing	49
Ridge, Judith	217
Roberts, Ted	89
Rossi, Bernard J	27
Rowe, Jennifer	250
Royal Society for the Blind of South Australia Inc	90
Rushby, Allison	44
Rushby, Pamela	31
Russon, Penni	261
Sally Milner Publishing	221
Saxby, Claire	29
Scribe Publications	122
Shapcott AO, Thomas	05
Sidebottom MP, Sid	91
Simon & Schuster Australia	243
Sly, Alison	139
Smyth, Kim	127
South Australian Government	201
Spinifex Press	61
Storrs, Graham	22
Sunde, Angela	155
Tan, Shaun	34
Tasker, Mel	135
Taylor, Peter	247
Temple, Peter	238
The Cameron Creswell Agency	160
The Coalition for Cheaper Books	218
The Mary Cunnane Agency	170
The New Zealand Society of Authors	28
The Scribo Group	208
The Shadow Lands	82
The Text Publishing Company	63

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Table A.1 continued

<i>Participants</i>	<i>Submission no.</i>
Thumbprint – Illustration and Design	222
Tranter, Lyn	75
Trevaskis, Ian	181
Trewin, Trudie	39
Tyrrell, John	191
University Co-operative Bookshop Limited (The Co-op Bookshop)	216
University of Queensland Press	255
van Gendt Stomann, Katrina	165
Venables, Bruce	38
Victorian Government	270
Walker Books Australia	256
Watts, Margaret	110
Wheatley, Nadia	189
White, Dee	15
Whiting, Sue	138
Wignell, Edel	40
Wild & Woolly (Books & Writers Network Pty Ltd)	86
Wilkins, Dr Kim	12
Williams, Sean	18
Wilson, Tony	10
Winton, Tim	204
Witkowski, Bernice	207
Working Title Press	143
Zephyr Music	64
Ziersch, Nahum	220

Table A.2 Visits and meetings

Participants

New South Wales

AC Nielsen
Allen & Unwin
Australia Council for the Arts
Australian Booksellers Association
Australian Copyright Council
Australian Publishers Association
Australian Society of Authors
Copyright Agency Limited
Dymocks Booksellers
Hachette Livre Australia
HarperCollins Publishers (telephone conference)
Leading Edge Books (telephone conference)
McGraw Hill
Printing Industries Association of Australia
Random House
Simon & Schuster Australia (telephone conference)

Victoria

Australian Campus Booksellers Association
Angus & Robertson Booksellers
Australian Competition and Consumer Commission
Australian Literary Agents' Association
Bloom Partners
Cengage Publishing
McPherson Press
Black Inc
Penguin Group (Australia)
Peter Donoghue
Readings Booksellers
Scribe Publications Pty Ltd
Shane Maloney

(Continued next page)

Table A.2 continued

Participants

Target

The Text Publishing Company

Thorpe-Bowker

Wilkins Farago

South Australia

Griffin Press

Australian Capital Territory

Australian Library and Information Association

Department of the Environment, Water, Heritage and the Arts

Kate Grenville

New Zealand

Ministry of Economic Development (telephone conference)

B Other matters

Key Points

- This study focuses on the merits of Australia's Parallel Import Restrictions (PIRs) for books as defined in the relevant provisions of the *Copyright Act 1968*.
 - There is no indication in the terms of reference or background COAG discussions that the study was intended to look at the definition of a book for the purpose of the restrictions.
- Tax policy, and the particular issue of the GST treatment of books, raises efficiency and other considerations that are beyond the scope of this study.
- Tariffs on imported paper reduce the competitiveness of local book producers. The Commission has previously recommended the abolition of such 'nuisance' tariffs set at 5 per cent or less.
- Issues related to the timely access to books for the vision impaired relate to the adaptation rights in the core copyright protection, rather than to the PIRs on books.
- Australia is currently developing specific policies to reduce greenhouse gas emissions. Seeking to use PIRs to additionally influence emission levels would at best be redundant and could be counterproductive.
- While the removal of PIRs for books might reduce a publisher's control over the supply chain, if there was any subsequent increase in piracy, better enforcement of the core copyright provisions would be the appropriate policy.
- Removing or relaxing the PIRs is likely to have little, if any, effect on Australia's literacy rate. The goal of increasing literacy levels is not relevant to the future of the restrictions.

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 were 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)

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 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. 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.

Although the BIAP terminated in 2004, the ELR scheme and ‘Books Alive!’ 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.

Access to books by the blind and vision impaired

As discussed in the body of this Discussion Draft, access to literary material is important to Australian society, both as a way of disseminating news and information, and also as a source of entertainment and leisure and 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 general 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 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:

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 in Australia, 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 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 Planet Publications (sub. 69, p. 2) — said that it suffers considerable losses from piracy, those losses are 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. But, while PIRs might conceivably make it easier to identify pirated imports after the event, as some of the previous reviews have observed, they do not directly target the problem. Hence, were there to be evidence of increased piracy in the books market in the future, better enforcement of the core copyright protections would be the appropriate response.

Promoting higher literacy rates

Several 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.

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 parts of the market that would be likely to ensue were PIRs removed would do little if anything to raise the literacy rate. In particular, the increase in the total volume of books purchased would most likely be quite modest (see chapter 2).

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