

The Australian Booksellers Association Response to the Intellectual Property Arrangements Productivity Commission Inquiry Report

Submitted by Joel Becker & Tim White on behalf of the Australian Booksellers Association
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About the Australian Booksellers Association

The Australian Booksellers Association (ABA) is the peak membership body promoting the interests of booksellers in Australia. Established in 1924 as a Federation, the ABA now acts as the national body representing Australian booksellers. Members range from independent bookshops to chain and franchise shops, as well as specialist, second hand, academic and educational booksellers. The ABA has approximately 600 bookshop members representing between 6,000 and 7,000 owners and employees.

Australian Booksellers Association position on Parallel Importation Rules

Having carefully considered the recommendations included in the final report of the Intellectual Property Arrangements Productivity Commission Inquiry Report No. 78, delivered to Government 23 September 2016, and released for comment in late December 2016, the Australian Booksellers Association maintains that the appropriate course is the retention of Parallel Importation Rules (PIRs), allowing for the codification of the current voluntary arrangements for the book industry.

This is not an argument about giving the consumer access to the cheapest possible books – consumers already have this via the internet and global retail sales, Consumers are not affected by PIRs as the legislation currently allows them to either purchase directly from overseas or for a bookstore to special order titles not otherwise available. This is an argument about making sure that the right environment exists to ensure a sustainable publishing and bookselling industry, including ongoing increases in the number of books available for local sale in a timely and fair priced manner, without further Government subsidy.

Parallel Importation Rules are simply the means by which authors can extract value from their copyright. PIRs are not unique to Australia. Virtually all developed nations have a similar regime with the notable exception of New Zealand. The Productivity Commission says New Zealand is irrelevant because it became an open market 18 years ago. The creation of an ‘open market’ created the conditions for the contraction of the New Zealand book retailing and publishing market. There is no other possible causal factor for the decline in the New Zealand market.

As Parallel Importation Rules are currently couched, they provide a balance between providing commercial certainty and fairness to copyright holders and protecting consumers and retailers against monopolistic behaviour. To remove PIRs entirely upsets this balance.

Parallel Importation Rules are relevant to the book trade in the following ways:

Books created and published in Australia by Australian publishers

- Removal of PIRs will reduce the income received from the sale of overseas rights because the risk of competing product being returned to Australia will increase. There would be a

disincentive for Australian authors and publishers to sell to other English speaking countries. Currently rights sales maximise the potential income for Australian authors and publishers. The proposed changes will decrease export sales.

- Authors and publishers would be selling a more valuable right than they would themselves have in Australia.
- By reducing the possible income from the sale of overseas rights, there is both a decrease in the national income and the distinct possibility that less Australian books would be published, or published in Australia.
- Because PIRs exist almost everywhere else, Australian authors and publishers would be prevented from selling excess stock overseas where rights had been sold, but the companies to whom they had sold rights, could sell their excess stock back into the Australian market.
- Authors would receive less income.
- Booksellers would have fewer books to sell and less local content to promote and a significant reduction in published authors.

Books created overseas and purchased for publication in Australia by Australian publishers

- Removing PIRs will eliminate the incentive for overseas books to be purchased for publication in this market by Australian publishers because of the increased risk attached to such publishing. This will lead to a decrease in the number of books readily and easily available locally and will also mean less adaptation of culturally relevant content such as measurements, language, photos etc.
- Again booksellers would have fewer books to sell and less local content to provide to Australians.

Books created overseas and distributed by Australian publishers pursuant to distribution contracts with overseas publishers

- Publishing is a complex and symbiotic industry. Australian publishers rely on income from books they have commissioned and published; income from books they have purchased local rights for and published; and income from books they distribute on behalf of overseas publishers.
- All three income streams support local publishing and local authors. Publishers often have reciprocal arrangements for the distribution of their titles with overseas publishers, and without the incentive of territorial copyright rights, these arrangements would be in jeopardy.

Taking into account these factors, the ABA believes that:

- There is a significant risk to the current wholesale environment which is actually:
 - Increasing year on year the number of books published in Australia; and
 - Sustaining healthy independent, local and chain bookselling
- The elimination of PIRs will see a significant reduction in the number of books (both in range and volume) available to booksellers for resale in a timely and cost effective manner, and will render contracts entered into in good faith valueless, leaving publishers and distributors with stock they may not be able to sell.

The Productivity Commission says none of this will matter as booksellers will be able to source books cheaply from elsewhere.

This is simply not true.

On a number of occasions in evidence at the hearings, booksellers asked the Productivity Commission, rhetorically, where they would get their books. The Productivity Commission had no answer.

There are in fact only two possible answers and substituting either for the current distribution model would not be beneficial to booksellers or consumers:

- International wholesalers
- The originating overseas publishers

In both cases the terms currently offered or available to booksellers are significantly less favourable, including the loss of sale or return (the ability to return unsold stock to the publisher/distributor for full credit), the requirement for booksellers to pay freight and booksellers assuming the exchange rate (variation) risk. Booksellers are retailers, not specialists in international freight and logistics. The most efficient and cost effective way for overseas books to be brought to Australia is via the current supply chain. If every bookshop has to negotiate with overseas publishers, distributors etc, the cost of business will go up significantly.

If booksellers are required to purchase more books for resale from these supply options, this will lead to:

- Books held in stock being more expensive.
- Less books being in stock in Australian bookshops.
- Small, independent, and regional bookstores becoming less viable and potentially closing.

Pricing

Much is made by the Productivity Commission of their comparative price analysis.

According to the Productivity Commission, 'In responding to a range of false claims and flawed analyses made by participants, the Commission has undertaken a comprehensive analysis of book prices, comparing the price of over 1000 like-for-like titles sold in Australia and the UK (and 400 in Australia and the US). Over three quarters of the books in the sample were more expensive in Australia than the UK, with Australian prices around 20 per cent higher. Under reasonable assumptions regarding discounting and freight costs, the Commission estimates the benefits to Australian from repealing the restrictions could be around \$25 million per year.'

One can only presume that the ABA's snapshot of book prices, done in June 2016 is one of the false claims/flawed analyses suggested by the Productivity Commission. Though this was only ever claimed to be a 'snapshot', it did have several points in its favour over the Productivity Commission's so-called 'comprehensive' analysis. The following questions need to be asked:

- Where is the transparency?

- There is not an appendix listing the titles. Why was this not part of the report?
- Does the survey from the Productivity Commission remove GST when comparing prices, as this is included in retail prices in Australia, but excluded in many overseas markets where tax is added at the time of purchase?

The ABA provided a detailed analysis of these titles, and brought it back to comparing like-with-like. Even though some of the titles were in fact being sold at a discounted price at the relevant bookshop, the ABA ensured that the prices reflected were the 'Australian Retail Price' as recommended by the publishers, and then compared that with the equivalent price in the UK/US. If the ABA had used the 'selling price' at the bookshop used (approximately 30% of those titles were discounted by 20-30%), it would have presented a much more favourable picture for the ABA's arguments. This so-called 'flawed data' could not have been more transparent.

The Productivity Commission makes 'reasonable assumptions' about discounting and freight costs'. What are those reasonable assumptions, and where does the \$25 million figure come from? Where is the analysis of the economic impact of loss of jobs, GST revenue, increased freight costs etc?

This approach is wrong and misguided. First it does not compare apples with apples. Whilst the content of a book is the same, its method and scale of production, the cost of distribution and the size of a print run differ widely from country to country. Also the nature of the retail market is significantly different in each country. By focusing crudely on Average Selling Price (ASP), rather than properly analysing the cost of production and delivery of a book, all the analysis does is identify the ability or willingness (or desperation) of the retailer in each market to discount a book below its RRP. It does not identify whether PIRs have an impact direct or otherwise on the ASP.

At its simplest, the wholesale price of a book will be affected by:

- The size of the print run
- The cost of distribution (*e.g. freight)

The ASP of a book will be affected by:

- The pricing strategy of the retailer (eg supermarket)
- The sales strategy of the publisher/wholesaler
- The retailer's cost of business (including rent, wages etc)

Australia has:

- Significantly smaller print runs
- Higher distribution costs (the tyranny of distance)
- Higher costs of doing business at all steps in the supply chain (particularly in higher rent and higher wages)

The UK has much larger print runs and the bulk of its sales on the genre of titles listed in the analysis, are sold through supermarkets as loss leaders.

Nowhere in the report of the Productivity Commission, is there any suggestion of price gouging by the local industry. Publishers, distributors, printers, creators (authors) and booksellers operate on relatively narrow margins within either the retail or business investment world.

Removing PIRS will not make the wholesale cost of books cheaper. In particular it will not:

- Reduce the cost of freight to deliver books around Australia.
- Encourage wholesalers to establish warehouses in Australia.
- Reduce the element of price volatility from foreign exchange risk.
- Encourage publishers or booksellers to take more risk in relation to sourcing stock.

More likely, removing PIRs will:

- Reduce publisher income resulting in less local content.
- Reduce the number of overseas books purchased to publish in Australia.
- Reduce the amount of stock in publisher warehouses.
- Reduce the range of books available from publishers.

The elimination of PIRs will have a significant negative impact on small to medium retail bookshops continuing to trade, and by extension, reducing the quantum of Australian publishing, which will in turn have an effect on jobs and income generation for Australian publishers and Australian writers. The flow-on effect will limit readers' access to books, potentially decreasing literacy and making the nation culturally poorer.

What is of significant concern is that the PRC has not done any economic modelling on how the industry will change as a result of the recommendations, or how Australians will benefit from the proposal. Blind faith in the market is not a substitute for proper rational policy that ensures the interests of Australians are best protected.

- Booksellers are retailers, not specialists in international freight and logistics. The most efficient and cost effective way for overseas books to be brought to Australia is via the current supply chain. If every bookstore has to negotiate with overseas publishers, distributors etc, the cost of business will go up significantly.

Availability

According to the Productivity Commission, 'Except in limited cases, Australian booksellers are prevented from purchasing stock from lower priced suppliers overseas, but must purchase from an Australian publisher regardless of the price. This restriction applies to booksellers only – Australian consumers can purchase books themselves from overseas online retailers. The restrictions can put Australian booksellers at a competitive disadvantage, and result in those Australians unable to purchase online paying higher prices.'

The reality is that any Australian bookseller, responding to a customer order, can purchase any edition of any book from whomsoever the customer wishes.

The Productivity Commission has chosen to largely ignore current practice in Australian where booksellers can purchase multiple copies for stock of any title if the territorial copyright holder cannot guarantee supply of stock within 14 days of order/enquiry.

Current Parallel Importation Practices

Availability of internationally published books

1. In May 2012, following the wide-reaching work of the Book Industry Strategy Group and the Book Industry Collaborative Council, the Australian Booksellers Association and Australian Publishers Associations negotiated a unique voluntary 14/14 day Speed to Market Agreement. This agreement, in practice, superseded the legislated 30/90 day code.
2. The legislation was not legally changed; however, the industry, with the knowledge of government, agreed to abide by this agreement, and has been doing so for the last four years. Retailers, publishers and consumers have benefited from better supply, better pricing and a better self-regulated industry.
3. Currently Australian publishers, under the agreed code of conduct with booksellers, have a maximum of two weeks to release an overseas title after it is released in the USA or UK. If they do not meet that date booksellers are free to parallel import that title.
4. Consumers can freely import copies for themselves at any time.
5. Increasingly major international titles are released simultaneously in the Australian market, providing world wide release availability for all readers.

Australian booksellers will be at a significantly greater competitive disadvantage if local publishers/distributors do not have parallel importation rules in place, as they are much more likely to hold less stock, therefore decreasing availability; providing less marketing incentives. The outcome of this would be to making pricing less competitive.

The Productivity Commission said, *'No fewer than eight past reviews, including by the Commission, and most recently by the Harper Competition Policy review, have recommended that prohibitions on parallel imports be repealed. The Australian Government supports the removal of the restrictions and agreed to progress this reform subject to the recommendations of this inquiry regarding transitional issues.'*

In reality, the fact that there have been this number of reviews, from a range of Governments, and that it has been rejected eight times, is indicative of, first, the monotony and failure of the reviews to understand the complexity of the issue, and second, the lack of ability to find cogent reasons for the removal of PIRs.

Although there were comments from leaders within Government, the ABA's understanding of the purpose of the report was to review arguments for and against before making a final recommendation. At that point the Government will or won't propose changes in the current legislation. The report presents all this, inappropriately, as *fait accompli*.

The view of the ABA is that removal of Parallel Importation Rules will have a negative impact on price and availability for consumers – the primary justifications used by the Productivity Commission for their removal.

According to David Gaunt, AM, and co-owner of award-winning bookshop, Gleebooks, *"The repeal of PIRs will likely lead to an increase in the price of books and limit local access to a wide range of international titles."*

The Productivity Commission said, *'The publishing industry has stridently opposed the removal of the restrictions. In doing so it has put forth a number of (often contradictory) arguments, including that the...restrictions do not raise the price of books in Australia, but at the same time are crucial to supporting the production of Australian literature,(which would require a premium on Australian book prices.'*

It has always been an axiom of any business that best selling products (books in this instance) pay for the ability to innovate and support products (books) that don't have the certainty of profitability. The significant sales of books by publishers that hold the territorial copyright in Australia to JK Rowling, Stephen King, and others pay for local publishing by emerging and developing writers, contributing to a strong local industry. It is important to note that many of those 'blockbuster' titles are printed locally, as well as the books by local authors, supporting a strong print industry in Australia.

As the ABA commented in its submission to the Productivity Commission in June 2016, *'Prices have significantly dropped in relation to their country of origin prices over the last five years. There was a comparative price review done in 2009. At that stage, the Australian dollar was at parity with the US dollar and strong against the UK pound sterling. In spite of that prices were substantially above what booksellers and the reading public thought was a fair conversion. Any exposure to fluctuations in exchange rates are borne by the publisher/distributor within Australia, ensuring more stability and certainty in margins for local booksellers.'*

The issue of Kirtsaeng

The Productivity Commission is wrong both as a matter of law and as a matter of fact as to the nature and consequence of this US Supreme Court decision. The case concerned the resale of second-hand books, not wholesale books; it turned on a particular doctrine of US law, not Australian or British law, and it concerned academic books not trade publishing. The case is not authority for the proposition that the USA is an open market

The salient point to take from Kirtsaeng is to observe what happened after the decision. To counter any potential for resale the academic publishers in the US changed their terms of trade and restricted supply to ensure that the only price world-wide for their product was the highest price in US dollars. The experience has been that academic books are now more expensive and less available – not the reverse.

The State of Bookselling in Australia

The Australian bookselling sector is one of the most vibrant in the world, with a healthy independent bookselling sector sitting alongside successful chain and franchise operations, educational and academic bookshops and specialist booksellers that operates without Government subsidy, and in fact, despite the withdrawal of government support, even for ABS measurement or establishment of the Book Council of Australia. Bookshops operate in CBDs, suburban 'High' streets, shopping centres and on university campuses, contributing to local economies and across Australia.

According to Mark Rubbo OAM, Managing Director, Readings Books & Music (2016 Australian & International Bookstore of the Year), *'Australian booksellers, authors and publishers have built a*

vibrant and sophisticated publishing industry. The repeal of PIRs will be like a dagger to the heart of that industry.'

Since the failure of the RedGroup bookshops (Borders and Angus & Robertson) in 2011, with the loss of 139 bookshops, and close to 2100 jobs, the number of bookshops has stabilised, with a small increase recorded over the last five years. These are just a few examples of existing bookshops that have expanded over that period:

- Readings Books & Music: Growth from 4 to seven shops by the end of 2016 (Vic)
- Avenue Bookstore: Growth from 1 to three shops by mid-2016 (Vic)
- The Sun Bookshop: Growth from 1 to two shops (Vic)
- Robinson's Book: Growth from 1 to 7 shops (Vic)
- Avid Reader: Expanding from 1 to 2 shops Qld)
- Berkelouw Books: Several 'brands' including Berkelouw, Harry Hartog and Bookface – total of 15 shops, nearly doubling in last three years (NSW, ACT and Qld)

There is also a strong Australian online commerce – both stand-alone online retailers like Booktopia and independent and chain booksellers who have a strong online presence, including Readings, Collins Booksellers, Dymocks, The Co-op and Gleebooks.

Sales trends over the last several years indicate that readers, and consumers generally, still wish to shop locally if they have the opportunity to do so. The various 'shop local' movements across Australia drive home the point that there is a great deal of social capital gained by people who can walk or make a short drive to shops, see their neighbours and be recognised by their shopkeepers. Bookshops are a key component of that 'shop local' experience, and are active cultural and social hubs for their local communities engaging with schools, young readers, community groups and local charities.

According to Fiona Stager, Avid Reader and Where the Wild Things Are (West End, Brisbane), *'Bookshops are frequently owned by people living locally and employing local staff. They are anchor businesses in local communities around Australia.'*

Consumers are entitled to choice. Local bookshops importantly provide choice to consumers by stocking curated products relevant to their communities and having them available for immediate purchase. Removing PIRs will lead to a reduction in the number of books readily available to customers, and an increase in the price of books not readily stocked. It will lead to significantly reduced consumer choice and potentially lead to monopolistic behaviour by offshore suppliers and retailers.

Tim White, Books for Cooks, and President, Australian Booksellers Association: 'We would be unable to maintain the range and supply of specialist titles for which we are known – at reasonable prices – for immediate local supply in-store without the support and retention of PIRs, which in turn lead to steady supply and stable pricing. Removal of PIRs would significantly reduce the ability of our customers to buy specialist titles in a proper retail environment where they can browse, choose, purchase or return books.'

Simplistic price comparisons sell Australia short

When considering the 'productivity' of allegedly lower prices, if comparisons are made in a limited and narrow way (particularly when based on old, now irrelevant, data) a number of significant factors which should be taken into account, are ignored, including:

- Australian booksellers contribute significantly to Government revenue by collecting GST, paying Australian taxes and employing Australians on a daily basis.
- Australian booksellers contribute significantly to local communities, schools, charities and the cultural welfare of Australia by making donations, supporting valued not-for-profit organisations and championing the cause of a clever country by supporting reading, learning and education across all ages.
- Australian booksellers champion the Australian literary industry and support and sustain local authors.

Ignoring these factors in pursuit of lower prices – based on bad data – will not make Australia more productive.

What happens next?

The ABA and its constituent booksellers are continuing to work with the Australian Publishers Association on improvements to the supply chain: the 14/14 Voluntary Code of Practice being a shining example:

- Ensuring that the quality of data and the communication of that data, continues to improve.
- Continuing the work being undertaken by the APA to improve the accuracy and functionality of Title Page.
- The ABA continues to explore ways and introduce efficiencies to ensure that the customer gets the best price possible, and support the legislating what is now a 14 day voluntary code of practice to ensure the speediest possible supply to readers.
- The Commonwealth Government has committed to removing the Low Value Threshold from 1 July 2017. This means that the 10% price 'protection' afforded to global entities like Amazon and Book Depository will be removed, making the comparison between the prices of books sold into Australia by these companies and those sold by Australian booksellers, ten percent closer.

Conclusion

Despite what appears to be a lengthy attempt to justify their position, the reality is that the report, in so far as it relates to the book industry, does not respond at all to the Minister's original referral as it does not address how the recommendation to remove PIRs will improve the overall wellbeing of Australian society; encourage creativity, investment and new innovation by individuals, businesses and through collaboration; allow access to an increased range of quality and value goods and services. With the power to make recommendations for the Australian public comes the responsibility to make them for the public benefit. The PC has failed in this regard.

By removing Parallel Importation Rules, there will be a serious and deleterious impact on those careers, and the businesses they represent. This will trickle through from the start-ups of the last

few years, the businesses that have grown, and the long-established businesses that have been serving their communities over the decades.

The removal of Territorial Copyright through the elimination of Parallel Importation Rules as a territory with market integrity would be a cultural and commercial disaster.

There will be no benefit to consumers, but there will be significant losses – in employment, in the reduction of publishing, and in ready access to the widest range of Australian and international books. And prices will not come down.

If the aims of the recommendations of the Productivity Commission are to ensure speedy availability and reduce prices by opening the market, it will fail on both accounts.

The government has a policy of innovation and being a clever country. It is counter to that policy to – without fundamentally sound evidence to support a decision – reduce the potential for access to books and information by placing further financial and access stresses on booksellers.

The ABA believes that it is in Australia's social, creative and economic interest to ensure a vibrant and sustainable literary and knowledge community. The bookselling and publishing industry is a finely balanced, self-sustaining one that plays a key role in achieving those aims.

The ABA submits that the current regime, supplemented by industry best practice as demonstrated by the 14/14 arrangements achieves the correct balance in so far as copyright is concerned between encouraging and supporting local businesses and publishers, and ensuring fair and open consumer choice in the market place.

The associations representing those sectors are working closely to ensure that we have a viable sector, and that means ensuring that consumers have access to books at competitive prices with a high level of service and easy access to titles from within Australia, and from around the world.

The ABA calls upon the Government to reject the recommendations of the Productivity Commission regarding Parallel Importation Rules.



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