
5 Impacts in the books market

Key points

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

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

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

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

5.1 Impacts on publishers

Broad impacts

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

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

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

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

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

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

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

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

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

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

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

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

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

Box 5.1 Selected participants' views on the impacts on publishers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Some specific impacts within the publishing industry

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Risk portfolios

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

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

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

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

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

Marketing and promotion

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

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

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

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

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

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

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

Australian educational publishing and the bundling of study and teaching aids

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dynamic impacts

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

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

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

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

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

5.2 Impacts on authors

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

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

Box 5.3 Selected participants' views on the impacts on authors

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

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

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

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

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

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

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

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

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

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

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

Box 5.4 Remainders and authors’ royalties

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

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

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

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

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

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

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

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

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

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

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

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

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

5.3 Impact on printers

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

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

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

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

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

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

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

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

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

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

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

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

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

Box 5.5 Selected participants' views on the impact on printers

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

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

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

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

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

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

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

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

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

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

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

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

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

Impact on printing costs

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

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

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

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

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

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

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

5.4 Impact on booksellers

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

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

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

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

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

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

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

Trade booksellers

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

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

Box 5.6 The PIRs and the use of market power

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

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

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

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

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

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

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

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

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

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

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

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

Others felt that it is not a significant competitor:

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

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

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

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

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

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

Independent booksellers

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

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

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

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

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

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

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

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

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

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

Sale or return conditions

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

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

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

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

Education Booksellers

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

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

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

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

Box 5.8 Competition in the adoption of text books

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

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

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

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

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

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

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

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

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

5.5 Impacts on consumers

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

Price effects

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

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

Box 5.9 Selected participants' views on the impact on consumers

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

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

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

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

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

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

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

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

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

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

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

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

Box 5.10 Pass through of cost savings to consumers

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

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

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

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

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

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

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

Changes in range and availability

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

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

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

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