
B Other matters

As noted in chapter 7, participants raised a variety of matters that the Commission considers are not directly relevant to the key issues in this study. Some related to the books sector more generally, while others were put forward as reasons for retaining the Parallel Import Restrictions (PIRs). This appendix elaborates on these other matters, although the Commission has not made any recommendations in relation to them.

The definition of a book for copyright purposes

The *Copyright Act 1968* does not define a ‘book’ — for a literary work to be protected by copyright, it must be reduced to a ‘material form’. However, for the purposes of Australia’s PIRs (and the exemptions offered under sections 44A and 112A), the Act does define what a book is not. Specifically, the 30 day release rule and 7/90 day resupply rule do not apply to a book whose main content is a musical work, a manual sold with computer software for use with that software, or a periodical publication (such as a magazine).

One participant, Zephyr Music, commented on the effect of excluding a book ‘whose main content is one or more musical works’ from the current PIR exceptions. Amongst other things, Zephyr Music noted that:

Books containing musical works share little in common with software manuals and periodicals. It is hard to imagine what elements these three categories do share in common that would justify excluding all three from the operation of Sections 44A and 112A of the Act. If anything, books containing musical works should more logically be grouped with books containing literary works. Musical and literary works both come within the definition of ‘works’ under Section 10 of the Act and the nature of copyright subsisting in them is substantially the same (Section 31). (sub. 64, p. 2)

Zephyr Music went on to state:

Any artificially drawn distinction between “books containing musical works” and books containing literary works” in the prosaic area of the commercial importation and distribution of legitimately published books, is not proper subject matter for copyright law in our view. (sub. 64, p. 2)

The Commission acknowledges that the arguments put by Zephyr Music have some merit. However, as the allowance or otherwise of parallel importation differs across the categories of copyright material, there will inevitably be an element of arbitrariness where legislation seeks to establish boundaries concerning its scope or coverage.

Nothing in the terms of reference, or the discussion by the Council of Australian Governments in relation to this study, suggests that it was the government's intention for the Commission to revisit this existing delineation between 'books' for the purposes of the parallel importation laws, and other material deemed in the Act to not be a book.

Goods and Services Tax

Many participants to the study observed that books sold in Australia are subject to the 10 per cent GST whereas books sourced on-line from overseas are not. Characteristic of these views, the Australian Publishers Association stated in its submission:

Now with the internet used by almost 80% of Australians, books printed around the world are available with a few mouse clicks, GST-free — an instant 9% discount to prices at an Australian bookseller. (sub. 244, p. 2)

Most of these participants went on to suggest that removing the GST on local books would be a better way of putting downward pressure on book prices than removing or weakening PIRs. Some further noted that neither the UK nor the US governments charged a consumption tax on books, and in the US, where a state charges a state-based sales tax, online retailers collect and remit payments to the relevant government.

Prior to the introduction of the GST in 2000, books were generally exempt from wholesale sales tax. By way of 'compensation' to the industry, the Australian government introduced the \$240 million Book Industry Assistance Plan (BIAP), which provided for:

- an educational textbook subsidy scheme
- funding for the Printing Industry Competitiveness Scheme
- the introduction of the Education Lending Rights (ELR) scheme
- funding for the ABS to collect annual data on the book industry
- a public literacy and reading program
- grants to schools to increase their stock of Australian books.

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

The Commission notes that rather than compensation for the GST, several components of this plan were more in the nature of supporting the broader community benefits attaching to improved access to books and higher readership levels. Further, the ELR scheme can be seen as an appropriate way of compensating authors and publishers for forgone sales where their works are held in education libraries.

The Commission recognises that the current GST arrangements do put local booksellers at some disadvantage compared with online foreign retailers. However, tax policy settings involve a range of considerations. Exemptions for particular sectors from generally applicable taxes have well documented efficiency costs which must be set against any benefits. Also, a removal of a tax in one area means that taxes must be raised elsewhere in the economy, or expenditure reduced.

These issues go well beyond the scope of this study.

Tariffs on imported paper products

A further impediment to the competitiveness of Australian book production, identified by the Printing Industries Association of Australia, is the current tariff on imported paper. The Association submitted:

Another important cost faced by Australian book printers involves the 5 per cent tariff that is imposed on high quality paper grades imported to Australia. In contrast a printed book can be imported to Australia duty free. (sub. 106, p. 12)

The Commission has previously examined the effects of such ‘nuisance’ tariffs in its *Review of Australia’s General Tariff Arrangements* (PC 2000). In that report it noted that while the 5 per cent tariff level involved relatively small costs to the community, tariffs continue to distort producer and consumer choices, and reduce the competitiveness of Australian producers. It recommended that general tariff rates be reduced to Free ‘sooner rather than later’.

In two subsequent reports where the issue of nuisance tariffs arose — the *Review of Automotive Assistance* (PC 2002) and *Review of TCF Assistance* (PC 2003a) — the Commission noted that nothing had changed to invalidate this earlier view. The observations and recommendations in the 2000 report are similarly relevant to the matters raised by the Printing Industries Association of Australia.

Access to books by the blind and vision impaired

As discussed in the body of this report, access to literary material is important to Australian society, as a way of disseminating news and information, and as a source of entertainment and leisure and as an embodiment of Australian culture. For those who are blind or have a vision impairment, access to this material in a form that they can meaningfully use is an additional challenge.

While the development of electronic technologies for the publication and dissemination of literary works has provided scope to increase timeliness and accessibility for the vision impaired, the Royal Society for the Blind (South Australia) argued that this potential has not been fully realised because of aspects of the current copyright arrangements. It stated:

For people who are blind or vision impaired this technology provides the ability for them to source reading materials at the same time as their sighted peers and enjoy a genuine equality of access. Unfortunately the current Australian and International Copyright arrangements negate this advance in technology. (sub. 90, p. 2)

The Society went on to recommend:

That copyright holders who choose not to create a commercially available and price competitive accessible version, at the same time as the “physical book”, of their reading materials in Australia, forfeit their right to withhold permission for organisations such as the RSB to produce an accessible version for use by its client group. (sub. 90, p. 3)

The Commission is sympathetic to these particular concerns and the need to ensure timely access to books for the vision impaired. However, this issue goes to the core of copyright rather than being related to the PIRs, which are the focus of this study. That is, it is about the adaptation right established by copyright and how that right is handled across borders.

Indeed, the treatment of electronic literary works, as far as parallel importation laws are concerned, is already more liberal than for hard copy works. Section 44E of the *Copyright Act 1968* allows the parallel importation of an electronic literary work, when embodied in a physical digital form (such as an e-book on a CD or DVD).

Environmental effects of book production

Concern about Australia’s level of greenhouse gas emissions, and the interaction with the current PIRs, featured in many submissions to the study. Typifying submissions on this matter, McPherson Printing stated that, in respect of the possible repeal of PIRs:

A further important consideration is the environmental impact of reducing the portion of books printed in Australia ... the additional carbon emissions generated by the much longer supply chain on offshore shipments is contrary to the nation's objectives in this area. (sub. 168, p. 3)

Specifically, participants argued that the abolition of PIRs would lead to an increase in offshore printing and a greater use of air and sea freight to bring books to Australia, resulting in an increase in greenhouse gas emissions.

However, in the Commission's view, greenhouse gas emissions associated with the production and consumption of books are not relevant to the future of the PIRs. The Australian Government is currently developing specific policies to price carbon emissions and encourage greenhouse gas abatement. Seeking to overlay direct carbon emission reduction policies with what amounts, in this context, to be a policy of reducing physical imports of books is likely to be at best redundant and possibly counterproductive. That is, it may be the case that in terms of securing a lower level of emissions, a reduction achieved by curtailing imports of books may be more costly for the community than reducing emissions in other ways. In making this point in a general way, the Australian Government's Carbon Pollution Reduction Scheme Green Paper said:

Australia has a strong interest in promoting broad-based, market responses to climate change because these allow abatement to happen where and when it is most cost effective, for example through improving overall energy efficiency ... In contrast, purely regulatory approaches often target the more obvious causes of climate change, leaving untapped more cost-effective forms of abatement. (Australian Government, 2009a)

The Commission further notes that an extension of the logic for curtailing imports of books to secure reductions in greenhouse gas emissions would seemingly require Australia to reduce its exports of books — at least insofar as it was concerned about the carbon footprint associated with the consumption of books in other countries.

Piracy

Piracy in the books industry occurs when someone makes unauthorised copies or reproductions of a book. While some unauthorised copies are of an inferior standard (such as coloured books being photocopied in black and white, or being reproduced on poor quality paper), some pirated copies of books are of a very high standard.

The development of e-books has further increased the scope for piracy, as have reductions in the cost of high-quality digital imaging and printing equipment. However, piracy is generally acknowledged to be much less of an issue in the books industry than for commodities such as CDs, and although one participant — Lonely

Planet Publications (sub. 69, p. 2) — said that it suffers considerable losses from piracy, those losses being mainly in regional Asian markets.

Some participants suggested that removal of the PIRs would increase the scope for piracy, as there would no longer be a single authorised publisher or distributor of a particular title in Australia, making it harder to control book supply chains. Michael Moynihan, CEO of HarperCollins and formerly of Random House India, emphasised that piracy is a particular problem in the context of the Indian market, and that any increase in parallel importation of books from India could include an increase in pirated works entering Australia.

What would be to stop pirates identifying Australia as a significant market and shipping books in? If the editions were sophisticated enough (and they are) then it could be quite difficult to work out where they came from. Even if this were not to happen, uncertainty in territorial rights and the subsequent reduction in multinational investment and commitment to the Australian market can easily lead to a situation as in India where the options to the consumer are undermined. (Random House India, sub. 87, p. 4)

While PIRs might conceivably make it easier to identify pirated imports after the event, some of the previous reviews have rightly observed that they do not directly target the problem. Hence, were there to be evidence of increased piracy in the books market in the future, whether PIRs were in place or not, the Commission considers that better enforcement of the core copyright protections would be the appropriate response.

Promoting higher literacy rates

Some participants, including the Coalition for Cheaper Books (sub. 218, p. 5), contended that the goal of increasing literacy levels is an important consideration to the future of PIRs. Specifically, they argued that cheaper books consequent upon the removal of PIRs would encourage reading and build literacy skills.

As the Commission noted in its discussion draft, it is not in dispute that further increases in Australia's already high literacy rate would have economic and social benefits. That is why there are various government programs in place directed at this end. However, in the Commission's view, the reductions in book prices in the market that would be likely to ensue were PIRs removed would do little to raise the literacy rate.

In response to the discussion draft, some participants commented that PIRs facilitate access to Australian-authored works, written in Australian idiom, and that this can have a positive impact on literacy quite separate from any impact it may have on the price of books. This was thought particularly important in the area of children's books:

But can good, strong Aussie content improve literacy? Surely! If a kid can read about a story set in a place they know, with familiar names, humour they appreciate, events that make sense to them, and spelling and grammar that is line with what they learn at school, their reading experience is so much more likely to be positive. THIS IS WHY we need to make sure that our kids get good Aussie books to read! (Kim Rackham sub. DR414, p. 2)

Such impacts were considered in chapter 6, as part of the discussion of the broader cultural and educational benefits that books may have. As noted there, PIRs are unlikely to be an efficient and effective mechanism for addressing problems emanating from insufficient demand for Australian childrens' books.

The policy stance on PIRs in other countries

Many participants argued that it would be not be sensible for Australia to remove PIRs while other countries continue to maintain similar restrictions. Typifying these views, Nick Earls contended:

If we were to open our markets to [the US and the UK], they would not open theirs to us. A move to allow parallel imports into Australia would be a move to make the playing field much less level. We would face being swamped by these two giant industries with their great economies of scale, and they would offer us nothing in return. (sub. 17, p. 5)

Even more forcefully, Scribe Publications said:

... in the United States and the United Kingdom — the bastions of free trade — parallel imports are prohibited. To surrender territorial copyright would be the publishing equivalent of abrogating sovereignty. (sub. 122, p. 8)

Several participants reiterated such views following the discussion draft.

The argument that Australia should not subject its authors and publishers to the competitive pressures of freer trade while other countries maintain restrictions has some superficial appeal. Indeed, the argument has been raised by many other industries facing the prospect of reductions in tariffs and other forms of border protection.

Yet as a basis for setting policies in Australia, the argument is by itself of little relevance. For good reason, Australia's trade policy settings over the last quarter of a century have been determined on a unilateral basis, dictated by what is in the national interest. This has typically entailed reductions in Australia's tariffs and border protection measures, even where foreign countries have retained their own such measures. This approach has been based on the recognition that shielding any particular local industry from international competition, whatever the protective

arrangements that apply in overseas markets, typically comes at a greater cost to the domestic economy overall.

In the Commission's view, the arguments underpinning that unilateral approach should apply similarly in this instance. Importantly, the approach does not restrict the policy calculus to 'narrow' economic outcomes and thereby preclude consideration of the cultural implications of changes in the size and nature of the books industry that might result from modifications to the PIRs. Rather, it focuses attention on the various benefits and costs *for Australia* of alternative policy settings, instead of simply presuming that because some other countries restrict parallel imports of books, so too should Australia.

Macroeconomic objectives and regional support

Some participants argued that PIRs are necessary to support exports and maintain employment, including in regional areas, particularly in the current economic climate:

[The Commission's recommendations] could also significantly diminish Australia's export income ... Sales of foreign rights to Australian books have enjoyed double digit growth for more than a decade and are now a significant export earner ... (Ian Irvine, sub. DR342, p. 2)

This will result in a loss of jobs in the publishing, printing, writing and illustrating industries, which could mean we end up paying more for our books not less due to the lack of competition. Sending jobs off shore is not desirable and hardly makes sense considering our economic downturn. (Angela Sunde, sub. DR406, p. 1)

[A] change to the 30-day rule would adversely affect several regional economies, such as Maryborough's, and regional employment. At a time of general economic slowdown, the impact of a change would be even greater. (Steve Gibbons MP, Joe Helper and Chris Meddows-Taylor, sub. DR554, p. 3)

The Commission acknowledges that the PIRs have increased employment, output and net exports in the books production industry, although equally, by dampening consumer spending power and holding resources, they are likely to have reduced employment, output and net exports in other parts of the economy. However, as the Commission has discussed elsewhere (PC 2008, chapter 6), industry assistance policies are not appropriate tools for addressing macroeconomic objectives.

Likewise, the Commission recognises the regional significance of parts of the books industry. In particular, absent PIRs, printing activity and employment in two regions are likely to be affected (see chapter 5). But it is not the role of PIRs to operate as a regional development/support mechanism. Any public support of this nature should

be provided explicitly and transparently, rather than by a private, implicit, tax on book consumers.

Distributional considerations

Some participants argued against any change to PIRs on the basis that incomes of authors would be likely to diminish under an altered regime and many authors do not make substantial amounts from their writing to start with.

Many writers and illustrators pursue their work with little remuneration. Few can make writing/illustrating their full time career. The surrendering of Australian copyright will only make it harder for them to continue in the industry ... (Amanda Graham, sub. 253, p. 1)

... this is the most astonishing and scandalous thing about this report: the fact that writers, the keepers of our stories, can be treated with such scant respect. Replace the word ‘authors’ in the phrase ‘authors would generally face reductions in their income’ with ‘doctors’ or ‘teachers’ or ‘public servants’ or ‘politicians’ and imagine the very idea that we would propose to *reduce* the incomes of these professionals or their ability to pursue a career. (Text Publishing, sub. DR442, p. 2–3)

On the other hand, according to a (self-described) ‘failed and failing’ author:

... there’s no *entitlement* to a writing or publishing ‘career’. There’s not even such an entitlement to a *living wage*. ... The urge [to pursue a career in the world of books] may be vocation or ambition or both, but either way it’s a workaday and working lifetime indulgence. As such competition is fierce, most of us will fail, and for the few, success should be seen as a blessing and a privilege. (Jack Robertson, sub. DR432, p. 22)

As noted in chapter 1, the Commission is required to make recommendations in the interests of the community as a whole, taking into account the benefits and costs of reform options to all affected parties. Accordingly, the Commission has previously made many reform recommendations that were likely to reduce the incomes of people working in particular sectors of the economy and potentially reduce employment in those sectors, where its analyses indicated that reforms would generate net benefits for Australia overall. And Australian governments have implemented many reforms, including reductions in import protection, industry assistance and restrictions on competition, on that basis. (The local book industry itself is likely to have benefitted from many of those reforms, through lower input costs and higher consumer demand.)

In assessing the merits of the PIRs in this study, the Commission has given no less or more weight to the interests of authors or others working in the book industry than it gives to Australians in any other sector. In doing so, it has focussed on the net benefits of the PIRs and their reform to Australians in aggregate, recognising that, beyond adjustment cost issues, any distributional concerns are more

appropriately dealt with through such mechanisms as the progressive taxation and social security systems that apply equally to Australians of any vocation.

That said, where an industry or activity generates externalities (as the book industry does through its contribution to Australian culture), there may be a case — on the basis of those externalities — for ongoing public support, in one form or another, for that industry or activity. In this context, the Commission has recommended a review of the totality of financial assistance for Australian writing and publishing (chapter 7). Such support is likely to also increase the returns of people who enter and work in the industry or activity. However, these distributional changes are incidental to the rationale for such industry assistance, and it remains for individuals to determine whether the potential monetary and other rewards from pursuing work and business opportunities within any particular industry or activity warrant the effort and risks entailed.