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Response to the Productivity Commissions Draft Report on *Intellectual Property Arrangements*

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“Australians deserve that their lives, experiences, country and culture be reflected in the literature that they read.”

Thomas Keneally, Man Booker Prize winner

Penguin Random House (PRH) is Australia’s largest trade publisher, a truly global publishing house, with a strong tradition of publishing the very best Australian writers. We work closely with Australian booksellers to connect these writers with the widest possible readership; we employ more than 500 people in Australia and have four sites around the country – including two distribution centres.

We are pleased to submit our response to the Productivity Commission’s draft report following the inquiry into Intellectual Property Arrangements (the **Draft Report**). We understand that the Australian Government has made some preliminary recommendations in its response to the Harper review regarding the retention or otherwise of parallel importation restrictions in Australia.

We support the Australian Government’s stated policy aims as outlined in the Issues Paper of wanting to ensure that the intellectual property system provides appropriate incentives for innovation, investment and the production of creative works while ensuring it does not unreasonably impede further innovation, competition, investment and access to goods and services. The Australian publishing industry has a long history of fostering diversity and the long term interests of consumers, as well as the encouragement of efficient investment, innovation and entrepreneurship. We want to ensure that Australian consumers receive access to the best possible content at the best possible prices, while allowing authors and local industries to receive appropriate remuneration for their creative investment.

We do not support draft recommendations 4.1, 5.1, 5.2 and 5.3 of the Draft Report. We strongly oppose the introduction of a fair use-style exemption to copyright infringement, and any changes to give effect to a reduction in the term of copyright. The current system works. All of the changes in this regard proposed in the Draft Report will only serve to diminish the rights of authors and creators of artistic work with no apparent benefit to the Australian cultural landscape. We believe that the tone of the recommendations in the draft report shows a strong bias against copyright in all its forms.

We will focus on draft recommendation 5.2 for the purposes of this response.



Draft recommendation 5.2: parallel importation restrictions

The Australian Government should repeal parallel import restrictions for books in order for the reform to take effect no later than the end of 2017

We do not support draft recommendation 5.2 of the Draft Report.

The PIR system of protecting territorial copyright has enabled the creation of new and valuable intellectual property in Australia and the export of the Australian cultural experience to the rest of the world. Our authors include globally recognized writers such as Richard Flanagan, Tim Winton, Tom Keneally and Peter Carey (three Australian Man Booker Prize-winners). We refer you to our original submission in response to the Issues Paper for a comprehensive articulation of the grounds for retaining the current system. Without repeating that submission, we submit this paper as an outline of specific industry issues and considerations that should be carefully reviewed by the government in its decision-making process. If adopted, the recommendations in the Draft Report will have a severely detrimental effect on the Australian cultural landscape.

- **Foreign editions of the same book competing with local editions putting Australian authors at a distinct disadvantage.**
- **Fewer Australian authors published, leading to fewer Australian books in general. This would have a detrimental effect on our culture.**
- **Mass importation of Australian authors' books at low or no royalty return to the Australian author.**
- **No significant impact on prices or speed to market for books for Australians.**
- **Reduction of Australian companies' and authors' ability to compete globally.**
- **Removal of a level playing field with other global publishers who enjoy the benefit of territorial copyright in foreign jurisdictions.**
- **Reduction of local investment in local content, reducing Australian consumers' access to the best and broadest list of Australian book titles.**
- **Significant reduction in Australian author income.**
- **Reduction of investment dollars available for local businesses to innovate and investment in Australian culture.**
- **Significant job losses across the industry.**



Territorial copyright supports local authors, industries and stories

“Part of what makes our industry viable and our literary output distinct is the concept of territorial copyright (which protects intellectual property in a particular country). And once again it’s under threat. Not in New York or London of course. The Americans and the Brits aren’t stupid; they’ll keep theirs because to give that up is to set fire to your own house.”

Tim Winton

The Draft Report does not support the price and availability arguments for repealing PIRs. The Draft Report also fails to address a highly significant consequence to the local publishing industry and Australian authors if the government elects to adopt recommendation 5.2 of the Draft Report.

Territorial copyright is a bedrock of the local publishing industry. It enables local publishing companies to invest in local authors with the confidence that foreign editions of the same book will not flood the Australian market. In a market without territorial copyright, local publishers would compete with foreign publishers for the sale of the same book. This will result in less financial incentive for local publishers to pay authors large or even merely decent advances or spend on marketing campaigns that would benefit local authors, for fear that foreign publishers would “free ride” those activities for their own gain. It would mean less or no investment in new Australian writers. The return on investment opportunity is clearly diminished in a market without local protection. And in an environment where the US and UK enjoy their own local restrictions on foreign imports, the removal of PIRs puts Australian industry and authors at a commercial disadvantage. If we are unable to guarantee exclusive local access to the Australian market, the Australian publishing industry would be greatly diminished and subject to mass foreign imports from the US and the UK. Revenue would be transferred to foreign publishers, retailers and wholesalers who operate in territories with territorial copyright.

Authors also rely on the sale of their works by local publishers (the initial acquirers) to overseas publishers. This has a commercial benefit for authors and local publishers, as well as a cultural benefit for Australia in the promotion of our creative industry in export markets. In the absence of exclusive territorial copyright, the local publisher would be less inclined to sell rights to foreign publishers because those foreign publishers would be able to supply an export



edition of the same book straight back into the Australian market. And if they did sell rights overseas local publishers would be unlikely to receive a significant advance on that sale to compensate for lost local sales. It is an industry reality that foreign publishers will pay an author a lower royalty for an export sale, compared to a royalty payable by a local publisher for a local sale. Authors would therefore earn less for their creative works in a market without territorial copyright. When authors already earn around \$13,000 per annum on average in Australia, this is a significant consequence.

Territorial copyright also enables local publishers to import overseas titles with the confidence that they will get a reasonable return on that investment in the absence of having to compete with overseas publishers for the sale of the same work. This increases consumer access to foreign books and the relative investment certainty means that local publishers can use the return on their sale of foreign works to invest in local authors. An undermining of local income received by local publishers naturally reduces the pool of investment monies available for local investment in local authors. New writers would be the sacrifice here – fewer Australian voices means fewer Australian stories. Where will our next Australian Man Booker prize-winner come from?

The removal of territorial copyright = our literary culture dies

We are fortunate to have several Australian writers of global repute (Tim Winton, Richard Flanagan, Tom Keneally, Anna Funder, John Flanagan, to name a few). These authors are nurtured, creatively built, commercially sold and internationally promoted by us, an Australian publishing house.

If the Commission's recommendation to repeal territorial copyright protection is adopted, the publishing house who has nurtured these careers from the beginning would have to watch as booksellers legally import overseas English-language editions of the authors' books. This not only gives to the author a drastically reduced income from these bargain-basement export editions (at significantly less than the domestic royalty rate), but the author would be forced into an invidious situation of choosing between their loyalty to their Australian publisher -- but with their income greatly reduced, as the Australian publisher would no longer be able to pay a decent advance -- or choosing to publish their works out of the US or UK. At which point the Australian publisher who has nurtured the talent loses the potential to make a profit at the vintage end of the writers' career.

The obvious consequence of this is that there is no longer an incentive for Australian publishers to invest in the long-term future of Australian writers, or spend time nurturing new writers, because inevitably those authors will need to be published first in other countries. The knock-on effect of this is that new, younger writers see their future not with crippled Australian publishers but with American or British publishers who will be deciding what Australians read. Slowly but inexorably a culture dies.



Australian jobs will be at risk

With more than 7,000 new titles published annually, the publishing industry contributes not only to the cultural but also to the economic wellbeing of Australia. The Australian publishing industry currently:

- generates \$2 billion in revenue;
- invests more than \$120 million per annum in Australian writers for trade (non-educational) books and their promotion;
- is made up of more than 1,000 businesses (many are small businesses);
- employs more than 4,000 people; and
- employs more than 20,000 people in the broader book industry, which includes booksellers and printers.

As discussed above, the impact of the removal of territorial copyright would be severe and far reaching. Job losses at PRH and across the industry would be a reality. In the absence of any evidence of price or availability improvement, it is nonsensical for changes with such severe economic consequences even to be considered as sensible recommendations.

But what do booksellers say?

The Australian bookselling community is one of the most vibrant in the world. It has the greatest diversity of independent booksellers in the English-speaking world. Removal of PIRs would put that at risk. The Australian Booksellers Association is working collaboratively with the Australian Publishers Association on this issue.

In the booksellers' own words:

“If the aim of the recommendations of the Productivity Commission is to ensure speedy availability and reduce prices, it will fail on both accounts.”
– Joel Becker, CEO Australian Booksellers Association

“The repeal of PIRs will likely lead to an increase in the price of books and limit local access to a wide range of international titles.” – David Gaunt AM, Gleebooks

“Australian booksellers, authors and publishers have built a vibrant and sophisticated publishing industry. The repeal of PIRs will be like a dagger to the heart of that industry.” – Mark Rubbo OAM, Readings (Australian and International Bookstore of the Year 2016)

“Bookshops are frequently owned by people living locally and employing local staff. They are anchor businesses in local communities around Australia.” – Fiona Stager, Avid Reader



Book prices: the reality

Pricing data used in the Draft Report is outdated and incorrect. To cite as evidence of the success of parallel importation a study undertaken of New Zealand book prices in 2001 is inadequate in a document that is meant to offer unbiased evidence to the government in order for them to make a decision. The Commission itself acknowledges that there is a lack of comprehensive data (refer page 85) and while briefly referring to the impact of foreign exchange rates on pricing of locally available books (page 86), does not give due weight to this important consideration. The reliance on outdated pricing data coupled with a lack of due consideration of the impact of foreign exchange rates means that one of the primary reasons for repealing the current PIR system is not supported. Current data, which the publishing industry has previously shared with the Commission, shows that Australians are *not* paying higher amounts for books when compared to other markets. The average selling price of books has fallen by 25% since 2008 according to Nielsen Bookscan. Pricing analysis of the top 150 books published in Australia in 2015 across the UK, US, Australia, New Zealand and Hong Kong reveals that Australian prices are generally comparable. Throughout the Commission's report facts are manipulated to push an agenda in defiance of what the Australian book industry actually is.

Like products in many other industries, the price of books is subject to usual foreign exchange impacts. The government cannot and should not make the publishing industry responsible for price fluctuations in foreign exchange rates.

Book availability: the reality

Australia is currently one of the most open book markets in the world. It is misrepresented as a closed shop when the facts are that Australian publishers have a bookseller-agreed system of 14 days to make a title available in Australia, to preserve copyright, after which local booksellers can import that title from overseas. However, for the most part, Australian publishers publish simultaneously. This does not happen in the UK or US – if publishers overseas buy the rights to a title they may publish that title when they wish with no territorial copyright restrictions.

Diversity of publications has also increased by 15% since 2008 according to Nielsen Bookscan. Australian consumers have also always had the ability to access foreign editions through foreign online retailers or as ebooks. The old argument of increasing speed to market as a sound basis for abolishing the PIR system is, again, not supported by current facts. Notwithstanding a great deal of submissions on this point, the Draft Report fails to acknowledge industry realities of local book diversity and availability.

The repeal of PIRs will not increase speed of foreign books to Australian markets and, for the reasons set out above, will only diminish the diversity of available titles and voices.



Direct subsidies to authors

“The present arrangements of subsidy are important to individual writers but are too intermittent and haphazard... a subsidy on a scale to make up PIR is unlikely to be politically viable, guaranteed or permanent. Would such a subsidy survive economic downturns, razor gangs, changes to policy and of government?”

Thomas Keneally

The Draft Report does not adequately address or acknowledge the very real cultural impact that the repeal of territorial copyright would have on the local publishing industry (see above). The reference to the replacement of PIRs with a direct subsidiary arrangement (refer page 131) fails to consider the current lack of funding of the arts generally in Australia, and more specifically the low level of funding for Australian authors. The Commission has done no modelling on how much it would cost the taxpayer if those impacted by the abolition of territorial copyright were compensated. It is not in the national interest of Australian writers to become dependent on government handouts, nor is it in the national interest for the government of the day to decide what Australians read. Unlike other businesses, the Australian publishing industry engages more than 1000 businesses without the reliance on government tariffs or subsidies.

How will the government come up with the \$120 million that is currently invested by Australian publishers?

A practical example: New Zealand

A close example of the impact of a move to an open market is New Zealand. So what has happened in New Zealand since the removal of parallel importation restrictions? New Zealand repealed its PIR legislation in 1998. Since that time, PRH New Zealand has contracted, with severe job losses, our two physical distribution centres have moved to Australia and our investment in local NZ writing has reduced considerably. According to Nielsen Bookscan data for the NZ industry:

- the range of books has reduced by 34.5%;
- the volume of print book sales has fallen by 15.4%;
- the price of books has also fallen by 14%; in Australia it has fallen by 25%;
- a significant number of jobs have been lost as publishing houses contract.



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Support Australian authors, Australian stories and Australian industries: retain territorial copyright

“The consequences will be job losses, public revenue loss as profits are transferred overseas, and a brutal reduction in the range of Australian books publishers will be able to publish. Australia will become, as it was in the 1960s, a dumping ground for American and English books, and we will risk becoming – as we once were – a colony of the minds of others... The book industry is not a protected industry. We are not asking for money, or for a subsidy. We are asking for the same rules and intellectual property rights that prevail for writers and book publishing in the USA, in Britain, in Europe.”

**Peter Carey, Thomas Keneally, Richard Flanagan,
Man Booker Prize-Winners**

We urge the Commission to remove draft recommendation 5.2 from its final report. As outlined above there is no price or availability question to be answered by the Australian publishing industry. The removal of territorial copyright would have a drastic and detrimental effect on the local publishing industry and local authors.

Australian narratives, and a strong creative industry, are important to Australians. Australian children deserve Australian stories. We refer you to the large groundswell of support for the #bookscreate campaign and the petition to The Hon Scott Morrison at <https://www.change.org/p/scott-morrison-save-australian-literature-stop-parallel-importation-of-books>. Australians care about the Australian narrative and literacy; they form an important part of our national identity. We should not undermine our cultural identity and the financial viability of local industry and authors based on unfounded price and availability assumptions from an outdated and inadequate report done in 2001.



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To conclude:

The Productivity Commission's report fails to give an accurate measure of the reality of the Australian book industry in 2016. In an era characterised by profound disruption in terms of technology and commerce, books are the one cultural industry in Australia that have continued to grow and thrive. The Commission misrepresents the Australian market as one that is closed, while the reality is that Australia is one of the most open markets in the world. It is nonsensical that the government would wish to destroy an industry that exists without subsidy or assistance, which makes a valuable contribution to employment, to the economy, to Australian culture and to Australia's good name globally. The question we ask is: 'Why'?

Julie Burland

CEO, Penguin Random House Australia & New Zealand