

# Nurturing creativity in an age of innovation

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

– Thomas Keneally



Australian Literary  
Agents' Association



# Copyright and Creativity

Copyright law sets out the rights of creators and users in relation to creative works. It is designed to provide a framework of incentives and rewards for creativity and so promote ideas, culture and future innovation.

**Copyright is the legal expression of a human right, guaranteed by the Universal Declaration of Human Rights.**

'Copyright works are created and produced by people who invest their time, talent and capital and who are thereby entitled to earn a return for their work or investment if they choose.'

– **Prof Michael Fraser**

'I feel I've made quite a contribution to the arts and culture here, and we should be recompensed properly. In order to write my book it took me eight years. I took time off from work, I took out a loan. I'll be lucky if I break even.'

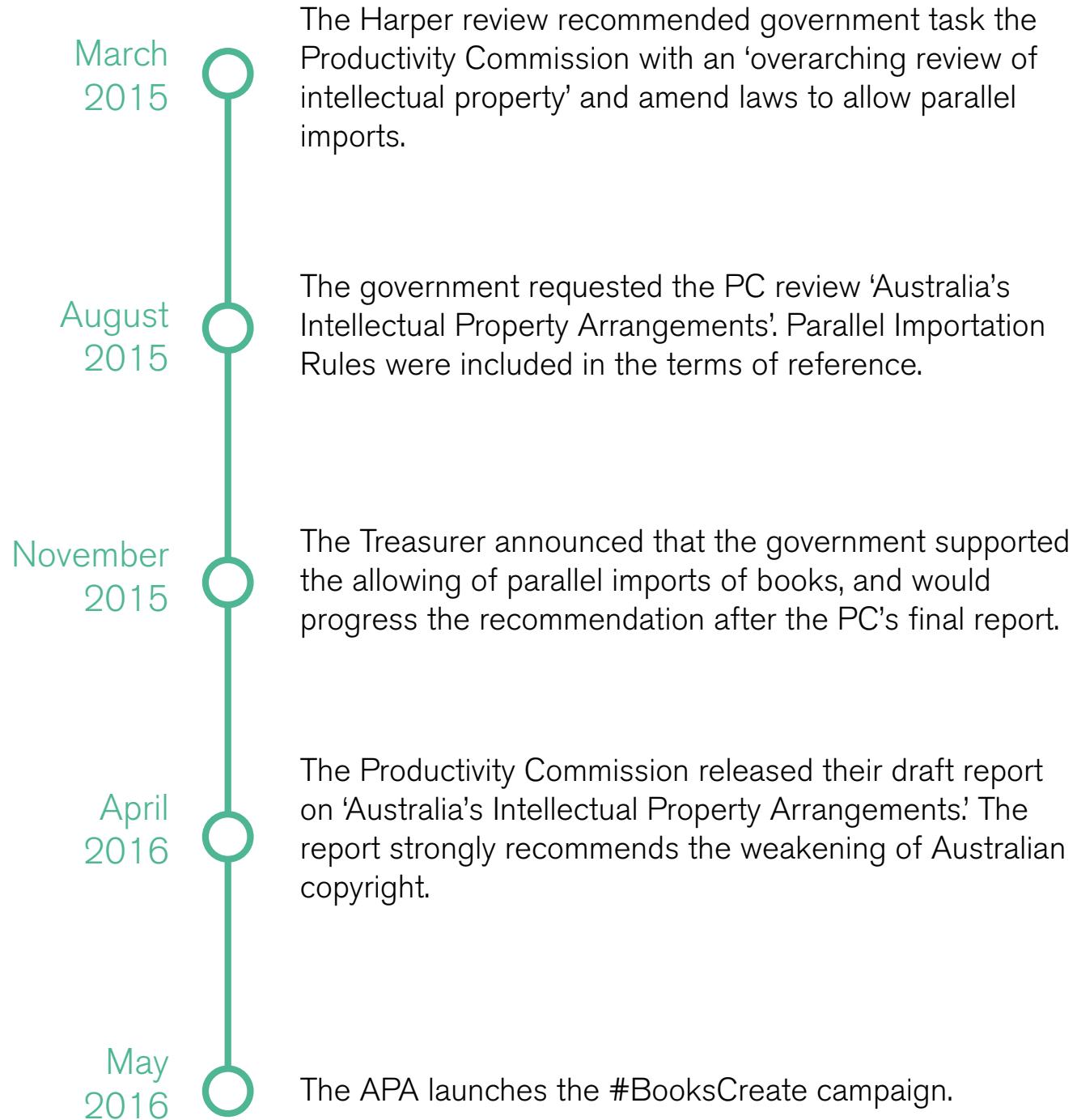
– **Magda Szubanski**

'What we're really protecting is the life of the mind; the creative core of what we are. If you attack creativity what you're saying is that it doesn't matter that we're human beings, because every human being ever born across this planet, across time, is part of the creative continuum.'

– **Jeanette Winterson**

# What's happening?

The government wants to repeal PIR legislation in the belief that this will lead to cheaper books for more people.



# What's at stake?

The creative industries are the fourth largest industry in Australia.

## Some facts about the Australian book industry:

- More than **7,000** new titles published annually.
- **\$2billion** in revenue.
- Publishers direct investment in Australian writers for trade (non-educational) books and their promotion is over **\$120M** per annum.
- More than **1,000** businesses in Australia are engaged in the publishing industry, employing over **4,000** people. Many are small businesses.
- More than **20,000** employed in the broader book industry, which includes book sellers and printers.
- Over **300,000** Australians attend over 100 literary festivals each year.
- Australia has the **14th largest** publishing industry in the world.
- Australia has the **largest independent bookseller** sector in the English-language market.
- Average author income is only **\$13,000**.
- The publishing industry **does not depend** on government subsidies. It is not protected by government tariffs
- eBooks only make up **20%** of the overall book market

# The Economists' take on Copyright

- Copyright is a distorting intervention and form of monopoly
- There should be no impediments to free trade
- A free market stimulates competition
- Protectionism should be eliminated
- Benefits to many (consumers) outweigh the damage to few (authors / publishers)

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians.

Their aim is, on the surface, a good one: to make local booksellers more competitive with international suppliers, promote lower prices for consumers and ensure the timely availability of titles. Their draft report makes three key findings or recommendations:

- [Finding: Reduce the term of Copyright](#)
- [Recommendation: Move to the US style 'Fair Use' model on Copyright](#)
- [Recommendation: Repeal Parallel Importation Restrictions](#)

The report is a broad attack on copyright and undervalues the creative contribution of authors and publishers while assuming that Australian readers will be better off with greater access to cheaper imported books, with little consideration to the impact on the creation of Australian literary work. Their findings and recommendations are not backed with any current evidence.

# 1. Finding: Reduce the Term of Copyright

Reduce the life of  
copyright to 15 to 25 years  
after creation, rather  
than 70 years after the  
death of the author as it is  
currently.

'Recently, it has been wrongly claimed that the Government is planning to reduce the life of copyright to 15 to 25 years after creation, rather than 70 years after the death of the author as it is currently. This is not something the Government has considered, proposed or intends to do.'

... The Productivity Commission notes in its draft report that Australia is a party to a range of free trade agreements and has no unilateral capacity to alter copyright terms and that to even attempt to do so would require international negotiations and the reversal of international standards.'

– **Mitch Fifield, Minister for Communication, Minister for the Arts**  
**May, 2016**

The Minister's statement calls into question why the Draft Report strayed so far beyond Australian law and international trade agreements. It also calls into question other recommendations in the report about US-style fair use and territorial copyright – which together underpin the economic model of the Australian book publishing industry.

## 2. Recommendation: US style 'fair use' model on copyright

An American legal principle that has enabled large enterprises in the US to use copyright material for free.

It allows content to be used for any purpose, provided the use meets certain 'fairness' criteria.

Australia has a system of 'fair dealing' – exceptions that allow the use of copyright material for review or criticism, research or study, parody or satire, news reporting, judicial proceedings or legal advice. It is clearly defined.

On the surface, under 'fair use' individual users of copyright material can benefit because there is less apparent constraint and cost, and it may seem like a good thing that schools and universities can access educational resources at no cost.

### **But what is the real cost?**

- The US definition of 'fairness' is far from clearly defined and despite 40 years of case law, US courts still disagree about how fair use applies. If Australia introduces 'fair use' there will be great legal risks for users of copyright material and more litigation around copyright.
- US style 'fair use' has recently been introduced in Canada with devastating consequences.
  - Less income for creators
  - Less investment in Canadian specific educational content
  - Educational publishers have closed their doors resulting in job losses
  - Ultimately schools and students will lose out with less Canadian educational content available.
- PwC recently estimated that introducing fair use in Australia could result in a loss of GDP of more than \$1 billion.

### 3. Recommendation: Repeal Parallel Importation

Transition to an open market

The government view is informed by the Harper Report:

‘parallel import restrictions on books and second hand cars should be removed’

‘would *potentially* lower prices’

‘*should* deliver net benefits to the community’

#### The current copyright law:

The *Copyright Act 1968* gives authors well-defined property rights, including the right to publish a work in Australia.

If a publisher holds the rights to publish the title in Australia, and makes the title available in Australia soon after its release anywhere in the world, the Act (Section 37) restricts the importation of commercial quantities of books without the copyright holder's permission. These rules are known as PIRs – Parallel Importation Rules.

But, note: *individually* consumers are free to buy books from any market in the world.

# The authors' view

Author income has fallen, on average, to just under \$13,000 per annum.

The Australian Society of Authors outlined the negative impact that removing PIRs will have on local authors in a petition to the Treasurer, Scott Morrison. It currently has close to 11,000 supporters.

[Removing PIRs will mean that authors will be] giving up a sovereign intellectual property right without gaining any reciprocal right with the world's largest book-producing nations, the USA and the UK. Rather than producing a level playing field, it would dig a very big hole for Australian authors, publishers and printers.'

– Garth Nix

'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 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

# The authors' view

Authors were vocal in their support of copyright and their condemnation of the Productivity Commission draft report at the ABIs

'What makes our industry viable and our literary output distinctive is the concept of territorial copyright, and once again it's under threat. The pointless abrogation of independence will usher in a new colonial era in publishing. Once again Australian writers will be edited in London and read in export editions at home as they were when I was a kid. That's just a huge and pointless step backwards.'

– **Richard Flanagan**

'Unlike the mining industry, Australian publishing asks for no subsidy, requires no docks to be built. It has raised itself to be the 14th biggest book industry in the world. I refuse to believe that such a robust Australian as yourself wants to do away with that and make us again and forever what we were when I began to write – a colony for other people's minds and other people's books.'

– **Thomas Keneally**

'Would any book that has won an award here tonight have been published in an Australia without parallel importation [restrictions]? We know what happens when it is abandoned. We have seen it in New Zealand and Canada. The evidence is there.'

– **Jackie French**

'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 publishing industry view

The Australian publishing right will be devalued. Investment in Australian works and Australian authors will be less attractive and more risky.

Many comments about prices are **out of date**, and quote a PC report that's nearly **10 years old**. Australian books are now **similar in price** to comparable markets. Prices have **fallen by a third** in real terms in the last decade. Many popular titles are offered at a **35% discount** by large retail chains. The most optimistic projection for the fall of prices is **around 10%**. Some prices may fall further if PIRs are removed but only occasionally, and the overall impact will be to reduce Australian publishing.

## There will be:

- Fewer Australian authors and fewer Australian books published;
- Less diversity of books available to Australian readers;
- Jobs lost in Australian publishing, bookselling and printing;
- Lower royalties and lower advances for Australian authors;
- Less promotion of Australian authors and trade in their rights internationally; and
- Further reductions in the independent bookselling sector.

Availability is **no longer an issue**. Australians can buy books from anywhere anytime. Publishers only keep Australian rights if they make books available fast, and an industry agreement guarantees they deliver in **less than half the time** allowed under the law. Unlike cars, consumers have long been able to order books directly from overseas.

**Australians care about Australian narratives**  
– in everything from sport to history, fiction to political biography. Authors in the other main English- language markets, including US and UK, have the benefit of territorial copyright in their home market.

**Removing PIRs will NOT achieve the government's intended outcomes.**

# The Australian book industry is competitive

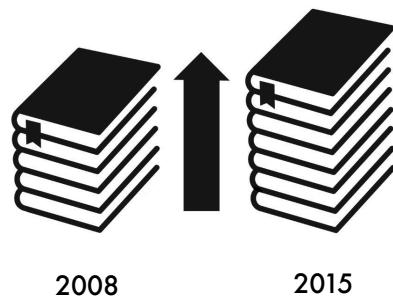
The implication from government is that the current market operates with monopolistic tendencies. This is not borne out by the facts.

Prices are falling. Diversity is increasing. Availability is improving.



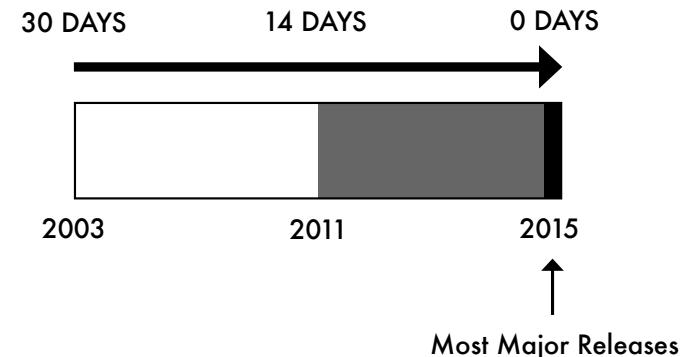
AVERAGE SELLING PRICE HAS REDUCED BY 25%

Source: Nielsen BookScan  
(after adjustment for CPI)



RANGE OF SOLD BOOKS HAS GROWN BY 15%

Source: Nielsen BookScan



CUSTOMER WAITING TIME REDUCED FROM 30 DAYS TO NO MORE THAN 14 BUT OFTEN 0

Source: APA

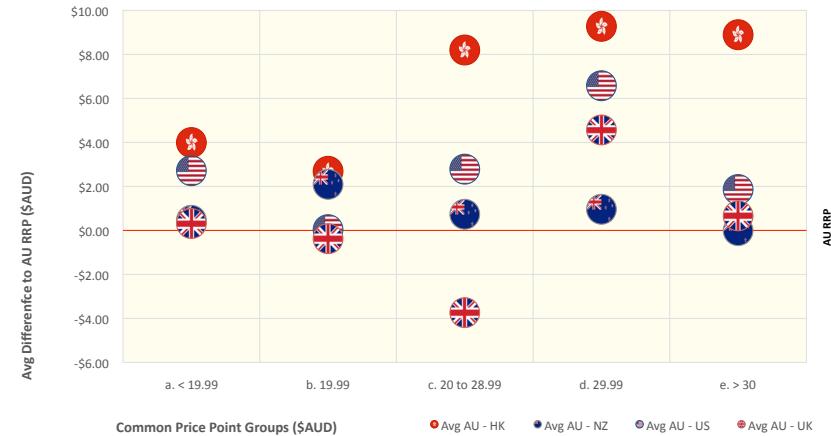
The Australian book industry is successful because it is a consumer-facing industry that is deeply engaged with its market – Australians who love books.

# Are Australian books price competitive?

Major new releases in Australia are both more expensive and less expensive than overseas editions. Generally prices are comparable.

The graph below shows a price comparison of 150 titles in the Australian market with the same titles in the US, UK, New Zealand and Hong Kong. Australian prices are represented by the red line.

Markets that have removed the value of their territorial copyright, NZ and HK, are almost invariably more expensive.



Note: APA International Price Comparison Analysis 2016

Note: all price comparisons of the foreign exchange rates are based on an average for a 12 - year period, in order to avoid unrepresentative exchange rates at any given point in time.



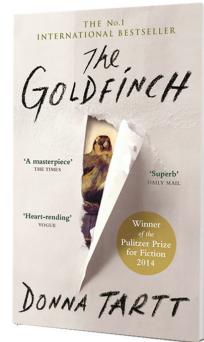
	\$32.99
	\$31.77 (NZD 1.1644)
	\$32.62 (USD 0.8584)
	\$36.77 (GBP 0.5165)
	\$42.00 (HKD 6.6654)



## GLOBAL PRICE COMPARISONS

Inclusive of all taxes

	\$32.99
	\$32.64 (NZD 1.1644)
	\$33.77 (USD 0.8584)
	\$38.73 (GBP 0.5165)
	\$27.01 (HKD 6.6654)



	\$19.99
	\$24.04 (NZD 1.1644)
	\$23.30 (USD 0.8584)
	\$19.34 (GBP 0.5156)
	\$43.51 (HKD 6.6654)

**The current economic argument is wrong. What actually happens when territorial copyright is removed is that publishers no longer have the option to price to market.**

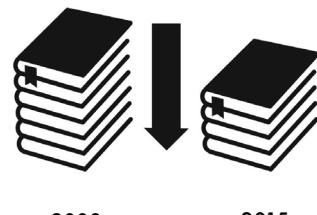
# The NZ example – 'free markets' are not cheap markets

New Zealand repealed its PIR legislation in 1998. Since that time the New Zealand publishing industry has contracted. The range of books has reduced dramatically. The volume of print book sales has fallen. The price of books has also fallen but to a lesser degree than in the Australian market.



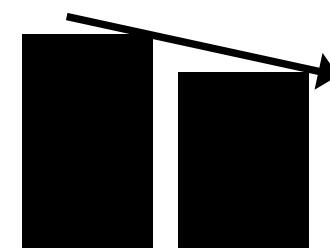
AVERAGE SELLING PRICE HAS DECREASED BY 14%

Source: Nielsen BookScan  
(after adjustment for CPI)



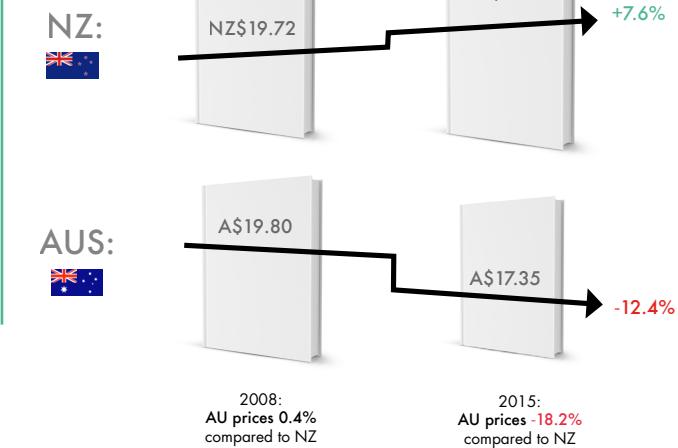
RANGE OF SOLD BOOKS HAS SHRUNK BY 34.5%

Source: Nielsen BookScan



SALES VOLUMES HAVE DECLINED 15.7% SINCE 2009

Source: Nielsen BookScan  
(ex Whitcoulls & Fishpond NZ)



Note: Comparable data from New Zealand is only available from 2008 from when AC Nielsen Bookscan began operating in the NZ market.

# The booksellers' view

The Australian Bookselling sector is one of the most vibrant in the world. Over the last 5 years, the number of bookshops has steadily increased. We have a combination of exceptionally strong independent bookshops around the country, as well as several strong groups of franchise and company owned stores. This growth would be reversed if PIRs are dropped.

“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**

The Productivity Commission recommendations are reliant on bad data – some dating back more than 12 years, with the last pricing survey done in 2009, and all of it contested by the publishing industry.

There will be less stock available locally and getting books from overseas at current (May 2016) exchange rates will be more expensive on average

## There will be:

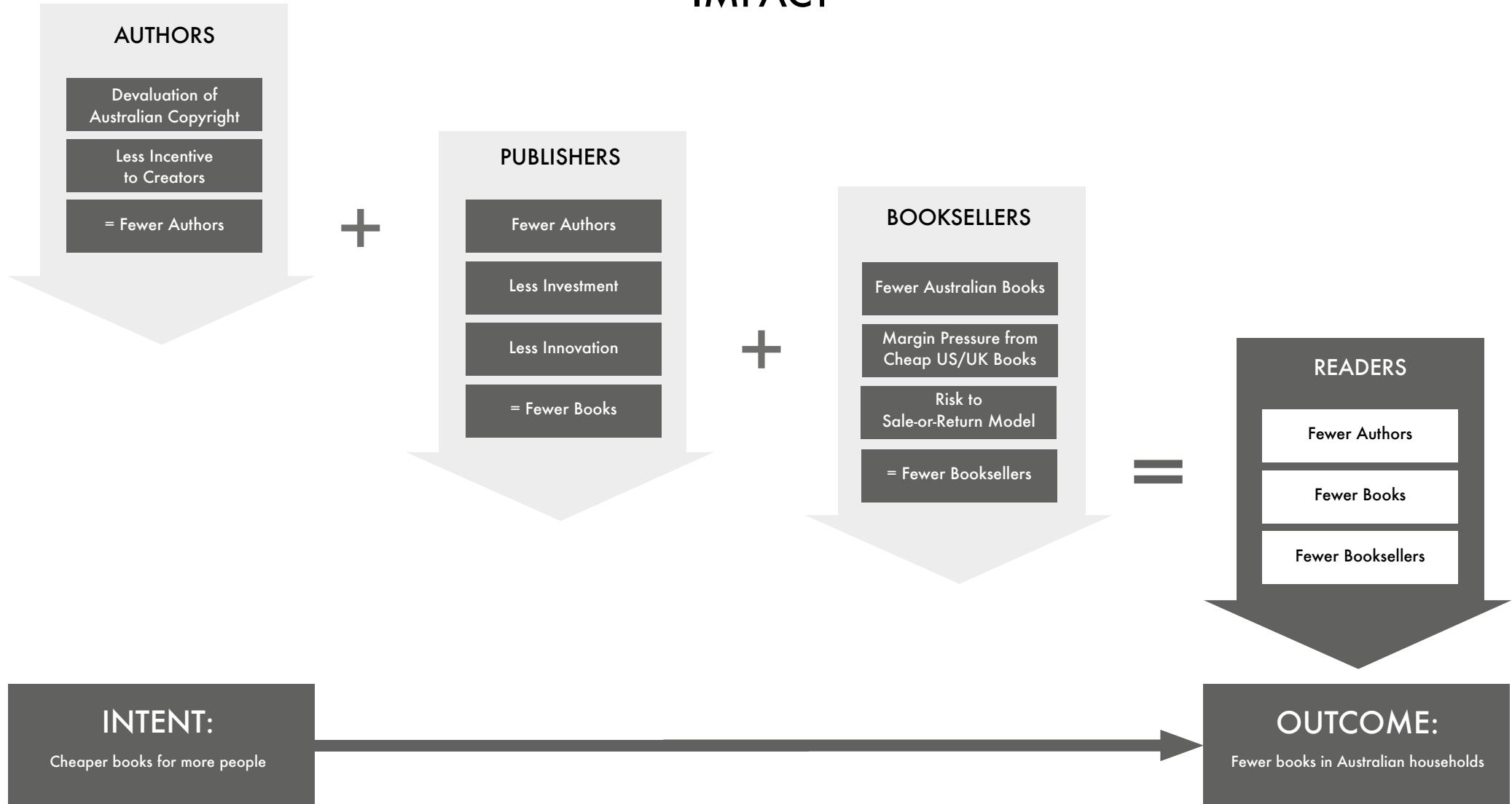
- An increase in off-shore book sales, damaging local businesses, resulting in the loss of jobs, taxation revenue and local businesses.
- Reduced access for Australian readers to both Australian books and international titles.
- Stock selection will be much more limited because stock purchased from overseas, will not have a manageable 'sale or return' policy, resulting in significantly less ability to take risks in purchasing.

## The local bookselling industry works now for the reader:

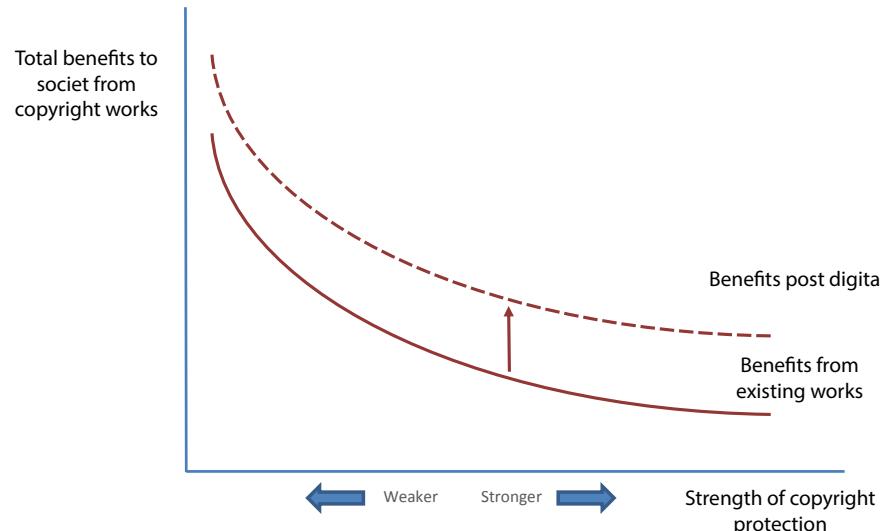
- The 14/14 voluntary code of practice has insured speedy availability of books at or very close to the date of global publication
- The price of internationally published titles has significantly improved over the last several years – at a time when the value of the Australian dollar has dramatically decreased, indicating that the industry has responded collaboratively to pricing concerns.
- They pay local state and Commonwealth taxes that would not be collected from international online retailers.

# Changing the law risks a threat to literacy levels

## IMPACT

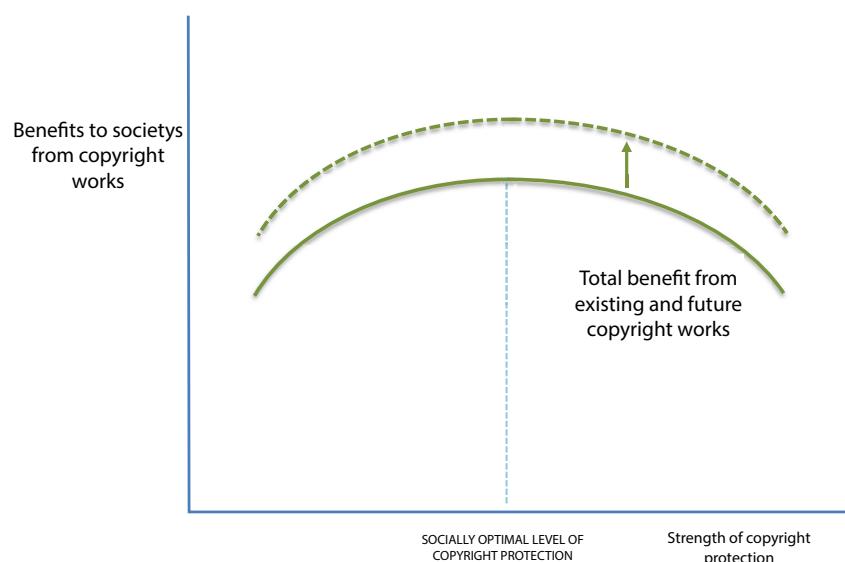


# The economics of copyright explained



'The current case for the removal of PIRs relies on simplistic economic analysis and arguments, and a more sophisticated analysis demonstrates that the case for appropriate copyright protections, especially those that encourage diversity and the entry of new producers, is strong. The arguments for removal of territorial protections for books is similarly based on a simplistic view of the business of publishing in Australia.'

'Maximising benefits to society via copyright policy requires balancing social benefits of maximising access to existing copyright works with the social benefits created by future new works that will be encouraged by the returns that copyright protections enable.'



A static, simplistic analysis produces a social benefits curve which presumes less copyright protection equals greater benefits to society.

A dynamic analysis that incorporates the complex balance between access and availability and creator incentive produces a very different social benefits curve.

Simon Molloy, 'Territorial copyright for books in Australia: A real-world analysis informed by the theory of impure public goods'

# What consumers think

Results of a Factuality Report commissioned by the Australian Publishing Association in March 2016, indicate support by a large percentage of consumers for keeping PIRs in place.

The report surveyed 755 Australian consumers, and conducted two focus groups in the seats of McMahon (18 Feb) and Wentworth (23 Feb). Key findings were:

- Cost of living is the major national issue but angst about book prices is a very small factor, except for educational books.
- Public sentiment in favour of authors is high, especially when told how little the average Australian author earns.
- 44% of consumers are opposed to the change (removing the PIRs); only 30% support it.
- Jobs, maintaining investment in Australian writers, and promoting the survival of specialist bookshops are the public's preferred objective for book market reform.
- Opinions against the move are most strongly based in support of writers, jobs, and culture.
- More voters are likely to be put off supporting the Turnbull Government if the change is made, than vice versa.

“  
It depends on how much cheaper. If it's less than 10% it's silly, I'd say let people keep their jobs...  
”

“  
Australian stories should be made in Australia.  
”

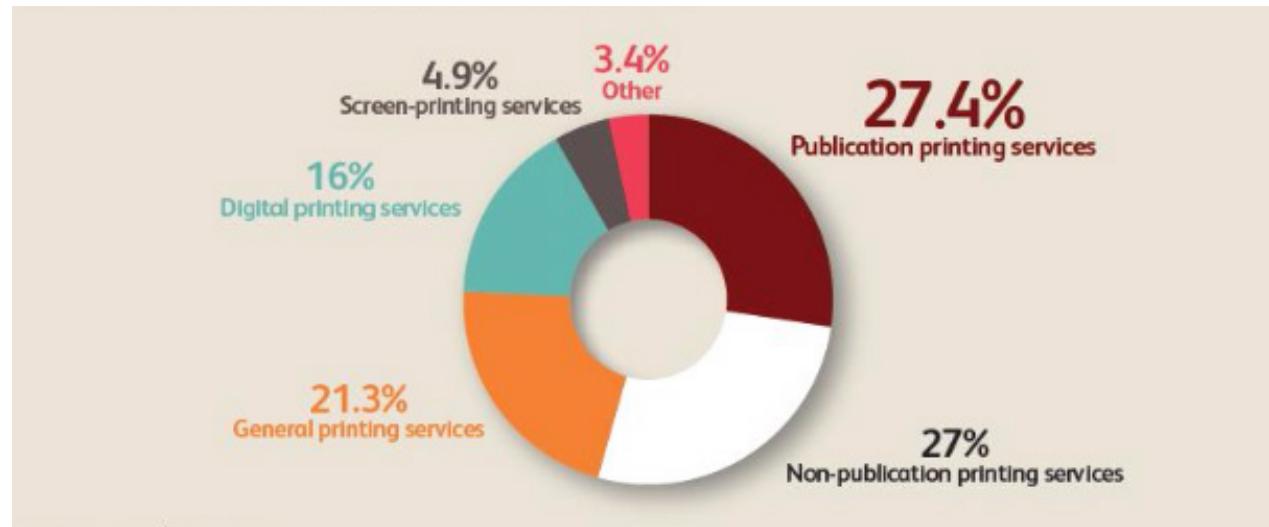
“  
Australian books are not that expensive compared to mass-produced foreign books, and we must protect Australian authors and publishers to ensure we retain our heritage and culture. I still have books I bought more than 30 years ago. They are definitely worth the price I paid, and I would hate to think of those books never having been published because the Australian author could not find a foreign publisher to take them on.  
”

“  
I think it's important to take my kids into a bookstore and for them to interact with the books.  
”

“  
I'm happy to pay a bit extra to protect jobs [for] publishers and writers. I also want a wider range of books and to keep non-mainstream ones.  
”

# The Print Industry View

Despite the many phases of structural and technological change, the industry has embraced 'digital disruption' and invested in quick turn-around book printing suited to the current demands of the Australian book market.



**The Australian print industry is a billion dollar business. In 2014-15 it generated \$7.1 bn in revenue. The publication print services sector alone generated \$2 bn and employs over 3,600 people.**

## If PIRs are removed:

- The demand for the services of a domestic publication print industry will be reduced beyond the point of sustainability
- Employment will be threatened in some already vulnerable regional communities
- Australia will lose specialised skills

## The flow on effects will be:

- A drop in demand for locally sourced paper impacting on paper mills in many regional areas
- A drop in demand for domestic custom book cover embellishment
- A drop in demand for sheet-fed printing

# A legacy to avoid

The government's plan to remove Parallel Importation Rules (PIRs) in the Australian book industry will have a devastating economic impact on the industry, from authors to publishers, from printers to booksellers.

It will also have a detrimental impact on Australian culture.

- The removal of PIRs will also have a significant consequence culturally, with a loss of the Australian narrative. It will be much harder for Australian publishers, with reduced income, to invest in emerging local authors, or to support and promote established writers.
- The government has put forward projected benefits for removing the PIRs, without any evidence or calculated assessment of the trade-off. One Treasury adviser has called it just a 'war of words'.
- But it's not worth risking jobs, Australian narratives, and a strong creative industry, for small price benefits that will advantage only a very few large retailers.
- Australians care about the Australian narrative and literacy, which form an important part of our national identity.

**Australian writing is Australia's greatest cultural, and free-trade, success story.**

**The book industry – and the Australian narrative and literacy – is under threat if the government moves ahead with its plan to remove Parallel Importation Rules.**

