In this submission I would like to argue that, contrary to the recommendations of the Productivity Commission in its Discussion Draft,[1], existing parallel import restrictions (PIRs) should be completely repealed. Such a repeal would impose little to no cost on the welfare of Australians even taking into account 'cultural externalities'; but when account is taken of dynamic, long run considerations, would lead to benefits due to lower prices, improved efficiencies and increased convenience for consumers.

My arguments can be set out in four major propositions that are consistent with the evidence that has emerged from the Commission's own inquiries as well as various submissions made by interested parties.

Firstly there is no evidence from jurisdictions that have abolished PIRs that their previous PIRs have sustained any cultural externalities of the magnitude suggested by the Commission. Insofar as PIRs protected any significant cultural externalities, one would expect national cultures to collapse or suffer significant detriments for instance through major reductions in the growth and development of cultural industries within jurisdictions that have abolished PIRs. This has clearly not happened, even allowing for a lag in time for such effects to emerge in jurisdictions which have experienced significant liberalisation of parallel importation. For example, in the common European Union market where PIR obviously does not exist between European countries, when there is a large country with one language and a small country with the same language (e.g. France and Belgium) there has been no evidence of the culture of one swamping the other due to increased access to parallel imports.

Another example, which was a focus of the Commission's inquiry and has also been much studied in the academic literature, is New Zealand. Obviously, New Zealand's culture has not been destroyed or swamped as a result of its removal of PIRs, at least based on such measures as the state of development and growth of its various creative industries including publishing[2] or other indirect measures such as the existing level of promotion of local titles.[3]

My second and related proposition following from the above is that it is inconsistent of publishers to argue that prices are low in Australia but at the same time for publishers to also claim that removal of PIRs would destroy local industry. The claim by publishers that existing Australian book prices are already competitive is made in numerous submissions which have been reviewed by the Commission.[4] These studies, as the Commission has noted, suffer from a number of deficiencies. They tend to compare only a small number of best seller prices and the comparisons are even then not always on a like with like basis (sometimes comparing hardcovers with paperbacks), and tend to be on a Recommended Retail Price (RRP) basis which can be misleading as discounting practices vary across countries.[5] Indeed, the Commission's own survey which tried to take account of these problems (though

1 Productivity Commission 2009, *Restrictions on the Parallel Importation of Books*, Discussion Draft, Canberra

2 Thus the Commission notes at p. 5.5 of its Discussion Draft that the New Zealand book industry has not suffered 'major detriment' from the removal of PIRs. See also the most recent report commissioned by the New Zealand Ministry of Economic Development into parallel importing - LECG (Law and Economics Consulting Group) 2007, *MED Parallel Importing Review: Impact upon Creative Industries*.

3 At p. 5.8 of the Discussion Draft, the Commission does note some publishers claim the removal of PIRs may have constrained further growth in promotion of titles. However in the absence of a rigorous counterfactual statistical analysis this statement cannot be properly confirmed.

4 See p. 4.10 of the Discussion Draft which summarises most of these studies.

5 P. 4.11 of Discussion Draft

subject to its own caveats) found that trade titles in Australia were somewhat more expensive than editions available in the UK and a lot more expensive than those available in the US.[6]

But even putting these matters aside, the fact remains that if the claims by publishers were to be taken at face value i.e. that Australian book prices are broadly competitive with prices to be found in other jurisdictions, then it is highly unlikely that the abolition of PIRs would lead to the destruction of the local publishing industry. A far more plausible scenario is a middle ground one where there will likely be downward pressure on book prices arising from the abolition of PIRs because of increased opportunities for alternative sourcing of books in some segments of the book market and because of increased pressures to be efficient due in part to new entrants, but that at the same time such reductions in prices would be readily made without any significant damage to the local publishing industry. This proposition is explored further below.

However, moving on to my third proposition in support of my conclusions and recommendations, I would argue that it is unclear by what mechanism PIRs actually promote local publishing, unless one assumes some form of cross-subsidy is at work whereby the additional profits that local publishers get from PIRs due to higher book prices then allows these publishers to plough back more funds into the development of local talent and other local industry development initiatives. This cross subsidy type argument does seem to be implicitly behind the advocacy of Australian publishers for the retention of PIRs. Thus, summarising the arguments that publishers have made for retention of PIRs as a means of encouraging local development, the Commission notes that one argument is that the higher prices facilitated by PIR would show up as higher profits for publishers which in the absence of off-setting cost increases, would raise the net returns from publishing books.[7] Even in this instance, however, the Commission notes that there would be some higher offsetting costs from current PIR arrangements such as the increased costs of acquiring Australian rights, and incentives to use higher-cost local printers or fast-track delivery arrangements to meet the requirements of the 30 day rule, and thereby qualify for PIR protection. [8] The Commission also notes that the resulting expansion of the publishing industry would also mean that cost of resources used in publishing is bid up.[9]

But even putting aside these counteracting effects, there is no reason to believe that the cross subsidy potentially derived for all beneficiaries of PIRs because of higher prices and thereby higher profits facilitated is devoted to Australian authors or is the most effective means of developing and promoting local publishing. This criticism applies equally to the best formulated version of the cross subsidy argument, which is that in effect the higher prices and therefore increased profits fostered for Australian publishers allows them to invest across various aspects of their business, including Australian-authored works, and in particular to take on new authors as part of a portfolio of risk.[10]

However the argument is formulated, fostering local publishing through PIRs is still an extremely poor targeted policy for a number of reasons. As noted by the Commission, the benefits of such higher prices assistance would be shared around various industry

6 P. 4.13 of Discussion Draft.

7 P. 4.5 of Discussion Draft.

8 P. 4.5 of Discussion Draft.

9 P. 4.5 of Discussion Draft.

10 As summarised at p. 5.7 of Discussion Draft.

participants to some extent, depending on the relative bargaining power of the various parties in the book industry supply chain.[11] Moreover, as the Commission has noted, some of the price increases in books fostered by PIRs will go to foreign-authored books and are therefore 'captured' by foreign authors and/or publishers.[12] According to the Commission's own estimates, for every dollar of assistance that PIRs provide to local authors and publishers in the trade sector, roughly a dollar also flows to foreign authors and publishers.[13]

Nor is there any a priori reason (in addition to the evidence already cited previously from other jurisdictions) to believe that Australian literary culture would stagnate in the absence of the additional poorly targeted rents provided to publishers from PIRs. As one submission from the Coalition for Cheaper Books notes, Australians' interest in literary accounts of their own country i.e. Australian specific works cannot be easily substituted for by literary product from other countries so there would still be an underlying demand for such products.[14]

This leads me to my final point – while the costs of removing PIRs seem negligible because the evidence that current PIRs are sustaining significant cultural externalities is almost non-existent, it appears from the Commission's own investigation that there are significant long term benefits to be gained from removing PIRs. In particular, removing PIRs would over the long term, encourage growth in bookselling by discounters such as discount department stores probably sourcing from alternative venues such as Asia more frequently and might also encourage entry by new on-line sellers, e.g. the entry of Amazon with its own depot in Australia. These developments would benefit the general public not only through lower prices for both primary titles and niche/back list titles but also because of increased distributional efficiency (which ultimately manifests itself in lower prices) and increased convenience to the general public in obtaining prompt and easy delivery of book titles that they are after.

For instance, the Commission noted a submission by the Coalition for Cheaper Books detailing how Asia is a potential source of substantially cheaper education books and could also be a potential source of cheaper trade books.[15] While the Commission's consultations found that some industry players would be reluctant to initiate such business in the short term because of concerns about supply reliability and publisher relations, over the long term they conceded that such trade relations could emerge.[16] Some publishers consulted by the Commission also agreed that the removal of PIRs would create incentives to create new structures to distribute books in particular segments such as importing educational books from Asia and that similar considerations would apply in the long term to trade books as well.[17] Some parties consulted also noted that there was scope for improved efficiency in the distribution of books.[18] The removal of PIRs would be expected to spur on such improvements in efficiency because of the exposure of the local market to alternative sources of demanded titles and the possible entry of new operators that arise to take advantage of the increased freedom to engage in parallel importation of books.

[11] P. 4.6 of Discussion Draft.

[12] P. 5.26 of Discussion Draft.

[13] P. 5.26 of Discussion Draft.

[14] Coalition for Cheaper Books submission at p. 3

[15] P. 4.14 of Discussion Draft.

[16] P. 4.15 of Discussion Draft.

[17] P. 4.15 of Discussion Draft.

[18] P. 5.10 of Discussion Draft.