**WINE EQUALISATION TAX REBATE: TIGHTENED ELIGIBILITY CRITERIA**

**A SUBMISSION TO THE AUSTRALIAN GOVERNMENT IMPLEMENTATION PAPER, SEPTEMBER 2016**

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**About Australian Vignerons**

*Australian Vignerons* was formed following a strategic review to change the focus, membership and structure of WGGA. This transformed WGGA into a more effective national body that can focus on national issues and add value to all winegrowers across Australia. These changes were supported by a unanimous vote at a special general meeting of members on the 8th of September this year.

Australian Vignerons is now the national advocacy body for wine growers. The name recognises the fact that the industry as a whole has changed from when WGGA was initially formed in 2005, and that more growers of wine grapes are making their own wine. It also recognises that the challenges and opportunities that the Australian wine industry faces are mostly shared between growers and makers of wine.

**Context**

The unintended consequences of the WET and associated rebate include those listed in the government discussion paper[[1]](#footnote-1),as follows:

*The wine industry has called for reform of the WET rebate based on their concern it has moved beyond its original policy intent. Compromising profitability in the wine industry, through:*

* *The ability to create artificial business structures to access the rebate and claim multiple rebates;*
* *The conversion of uncommercial grapes into bulk wine for the sole purpose of claiming the rebate, affecting the price of grapes and wine.*

The Australian wine industry is vast and diverse. The impact of the wine equalisation tax (WET) and the associated rebate have impacts in different ways.

For example:

*Cool and temperate regions*

Production is predominantly high value bottled wine in small to medium sized production facilities. These regions usually have a large number of small wine growing and making companies, and often have strong synergies with the Tourism industry in the region.

For these producers, the predominant concern is the WET and impact it has on the price of bottled wine. For example, a bottle of wine that retails for $40 would have approximately $11.80 total in taxes (WET and GST) included in the price. Producers in these regions see the WET as a main issue, and view the rebate as a necessary offset to the “sticker shock” caused by the impact of the WET on the retail price. This is in line with the original intent of the rebate.

*Warm inland regions*

Production is mainly higher volume lower priced wine, often sold in bulk containers and exported for bottling at destination. Considerable domestic production is in cask, and bottled wine that retails for less than $10 per bottle equivalent. This is an important part of the domestic market by volume, as in recent times approximately 79% of wine has been sold domestically at less than $10 per bottle (equivalent) and approximately 90% sells at less than $15 per bottle[[2]](#footnote-2). These regions usually have a small number of high volume producers that dominate the production of the region, and given their location some distance from capital cities, tourism is a smaller part of the regional economy than it is in some temperate regions.

Producers in these warm in land regions are mainly concerned with the impact of the WET rebate rather than the WET. Much of this concerns stems from the disparity in sale price often found between bulk wine that has attracted rebate and wine that has not. The ability for bulk wine producers to access rebate allows a wine sale at a lower price, and it has created an “arms race” of those who can access rebate those who cannot. The end result has been a downward pressure on the value of bulk wine, and in turn the contributing fruit. In many cases rebated wine has ended up being sold in export markets, and so the perverse impact has not been limited to domestic wine sales.

Industry Wide Issues

Concerns about rebate policy will differ between producers depending on the issues that they face in their region, their size and position in the production chain. The challenge in developing a national policy position that will fit this industry with the diverse business models is often not well understood.

Given this diversity across the Australian Wine industry, finding a “one size fits all” taxation and rebate policy that has sound integrity and does not result in unintended consequences is difficult. Australian Vignerons recognises the effort that the Federal Government has dedicated toward this consultation process, and the inclusion of state and regional bodies in that process, in order to achieve an acceptable result for industry.

There are some growers who have, often due to the instability of supply contracts with wine companies, decided to make wine for sale. In many cases a potential sale of fruit has been withdrawn immediately prior to harvest, with many growers facing the choice of either producing bulk wine for sale, or of possibly watching that fruit remain unharvested thus incurring financial loss. Many of these growers have been making bulk wine for sale and have factored the ability to receive the WET rebate into their business plans for the immediate future, which in some cases may include contracts with wine buyers.

**The Need For National Focus**

Australian Vignerons has members from all major wine grape-growing areas of Australia and entities that operate a wide range of business models. As a result there is a range of opinion about preferred policy settings for WET rebate eligibility from a desire to see the rebate entirely removed, to others who would prefer to see the previous settings continue. The following submission is a result of Australian Vignerons’ consideration of the national industry interest, and recognises that some winegrowers will not be pleased with the entire outcome.

*It is, however, a position arrived at in good faith for the benefit of the Australian wine industry as a whole.*

**The Federal Budget**

In the May 2016 budget, the government announced that it would:

* Provide $50M over four years to AGWA to “promote Australian Wine overseas and wine tourism within Australia”;
* Strengthen associated producer legislation and tighten anti-avoidance measures;
* Reduce the Wet rebate cap from $500,000 to $350,000 in July 2017, and further reduce the cap to $290,000 from 1 July 2018;
* Tighten eligibility criteria such that from July 1 2019 a wine producer must own or lease a winery and sell branded, packaged domestic wine to qualify for the rebate. Final details to be settled through consultation.

**Eligibility**

Australian Vignerons:

* Agrees with measures that will restore integrity to the taxation of wine and the associated rebate;
* Does not want to see valuable regional wine businesses (those both growing and making wine) unduly damaged by unintended consequences from this reform.

Rebatable Wine: Packaged and Branded Wine

It is agreed that the removal of rebate for unbranded and bulk wine will address a large part of the perverse market impact that has reduced the value of wine and the contributing fruit. It is also recognized that some businesses have structured to make bulk wine, and that these businesses should have enough time to adjust to any change in these taxation settings. On balance, this change to eligibility will be an important measure to restore rebate integrity.

**Recommendation 1**

**Australian Vignerons recommends that the WET rebate should only be available to wine that is packaged, branded and ready for retail sale, in a container no larger than five litres.**

Use of Trademarks

It is understood that there are varying degrees of integrity associated with different types of trademarks in regard to potential rebate integrity. Registered trademarks are understood to provide the greatest level of integrity, with common law trademarks possibly being a more subjective test. There are some concerns about the exclusion of common law trademarks for rebate eligibility, as some established brands might not be eligible for registration due to similarities with other brands. There has also been some comment that brands that contain reference to a region might also have problems in obtaining registration, but that issue may be dealt with by exception. Registered trademarks will provide the greatest level of integrity, and would be preferred. Licensed trademarks may be problematic, and for that reason are not recommended.

**Recommendation 2**

**Australian Vignerons agrees that the rebate should be tied to a producer through sound integrity measures, and that rebate should only be paid on a branded product that identifiably belongs to that producer.**

Owning or Leasing a Winery

Australian Vignerons does NOT support a requirement to own or have a long term lease arrangement with a winery as the sole requirement to qualify for rebate for the following reasons:

* This does not reflect the current wine industry arrangements where valuable regional businesses utilize contract processing, and in doing so employ people and invest in regions, and would be damaging to regional economies;
* Does not reflect the flexible, innovative and responsive wine industry that will be required in the future to more effectively provide new and emerging consumers diverse and premium wines;
* Is at odds with the excess amount of processing capital that exists in the wine industry, and risks encouraging the stranding of assets, and a system that will be difficult and costly to administer.

Australian Vignerons believes that the requirement of a producer to own the grapes at the crusher is a solid alternative integrity test, and is a logical next step from the first test of eligibility above. It is also traceable through label integrity measures. While there has been some discussion about other asset tests such as ownership of a vineyard, winery or cellar door, these tests are potentially fraught with problems in enforcing integrity. This requirement would have an allowance for a blending requirement, or difficult or problem years where supply of a producer’s own fruit may be affected due to natural impact such as frost or hail. The current label requirement of 15% “other” allowance for label requirements is a logical measure, and Australian Vignerons understands that this level will provide greater integrity to the tax system, and therefore a better outcome in avoiding unintended consequences.

**Recommendation 3**

**Australian Vignerons supports the test of ownership of at least 85% of grapes at the crusher through to a packaged, branded product as a qualification to receive WET rebate.**

The Rebate Cap

Australian Vignerons represents a wide range of members, some who would prefer to see the rebate cap reduced, but on balance the preferred position is that the rebate cap remains at $500,000 p.a. We believe integrity can be restored without reducing the benefits that the rebate cap provides to regional wine business at this level. The impacts from a reduction in the cap go beyond the simple number of businesses that receive rebate between the “old” cap of $500,000 and the proposed “new” cap of $290,000 p.a. There will be significant negative impacts to regional economies especially where there are a high number of recipients that fall within this rebate range; effectively resulting in a cluster of negatively impacted businesses within one region.

If a reduction in the cap is necessary, Australian Vignerons favours a refocus of the rebate cap for those businesses that qualify for the eligibility criteria and the proposed $290,000 cap. It would be expected that for producers to qualify for a refocus or “top up” rebate of $210,000, there must be a stringent set of additional rebate criteria, including:

* That producer must have already qualified to receive the $290,000 capped rebate;
* Any additional sales must be direct to consumer, and WET must have been paid in order to claim the rebate;
* Those sales must have been processed from a physical cellar door outlet;
* The producer must satisfy suitable criteria under a suitable definition (for example the criteria used for qualification of a producer under some state legislation, such as that in NSW and WA could be used as a guide to suitably define a producer for this purpose.)

These reforms would be consistent with the original intent of the rebate system. The requirement for tax to be paid to qualify for rebate removes the ability for perverse outcomes and market distortion. This measure also specifically focuses on recipients of the rebate investing in regional areas with cellar door outlets, and encourages direct to consumer sales that create synergies with tourism and other regional business. This is consistent with the original intent of the WET rebate when it was first proposed.

**Recommendation 4**

**Australian Vignerons support retaining the rebate cap at $500,000 p.a. If that is not feasible, an additional “top up” rebate should be introduced under stringent criteria, so that valuable regional wine businesses are not lost under these reforms.**

Timing of Introduction of Eligibility Measures

There has been discussion about bringing forward the timing of introduction of these integrity measures, partly to bring forward the removal of the perverse outcomes from the previous rebate regime, and also as a suggested trade-off to allow for delaying the reduction in the rebate cap.

Bringing forward of the eligibility requirements will be good for some and problematic for others. Removal of rebate of bulk wine will remove the disparity between rebated and non-rebated wine, and remove a significant downward force on the value of wine grapes in the medium term. The transition period will be of concern to some producers, and it is imperative that clear messages about the intended legislation are conveyed, and some consideration given to producers who have pre-existing contractual commitments based on the sale of bulk wine.

The proposal that has been discussed during the consultation phase to bring forward the eligibility criteria starting at 1st July 2017 instead of starting the introduction on 1st July 2019 has merit. If reform of the eligibility criteria achieves the desired integrity standard, a reduction of the cap will not be necessary. There is an absence of sound data to guide this decision.

If bringing forward the eligibility measures would allow a deferral of the cap reduction, then the impact of these reforms may be assessed, and the need to reduce the rebate cap or not can be made with the benefit of accurate data.

There should be some consideration given to producers who may have contractual or other commitments based on the pre-existing legislation. It will also be important that wine that is currently held in storage and produced under the previous legislation is deemed to be rebatable, so as not to impose a loss during the transition period of reform.

**Recommendation 5**

**Australian Vignerons supports the bringing forward the introduction of eligibility criteria from the planned date of July 1 2019 to July 1 2017, on the understanding that clear and regular communications will allow wine businesses to plan and adapt to the proposed changes.**

**$50M Toward Market and Promotion and Tourism Activities**

Australian Vignerons agrees that savings from WET rebate reform be directed back to industry benefit. It also agrees with the following points made by the Minister during the consultation discussions, namely:

* The plan cannot be “business as usual” and should be treated as a “once in a generation” opportunity, and therefore receive special focus;
* That it may contain “onshore” and “offshore” activities;
* That formation of the business plan should include industry input to provide oversight by industry.

It was heartening to hear during the consultation session that one metric to assess the profitability of the wine industry would be profitability of winegrowers. It is essential for the future of the industry that those who grow the wine are able to reinvest in their businesses with confidence, and that they can continue to provide the best fruit to ensure production of the best wine.

Australian Vignerons seeks to promote profitability along the wine value chain. The split between “growers” and “makers” of wine in the past decade is no longer clear; and continuation of this trend will see the evolution of a more innovative and quality – focused industry. Any work at developing or encouraging new industry models that assist this refocus will help the profitability and resilience of the wine industry as a whole.

For example, some growers are now starting joint venture arrangements with wine-making companies to make and export wine directly to export markets. Such an arrangement typically covers to costs incurred by each party, and then splits the available profit. This arrangement potentially rewards or penalizes the grower and the maker of the wine commensurately, and is a more transparent business relationship that provides more accurate market signals to the grower supplying the fruit.

**SUMMARY**

Australian Vignerons recognises the effort taken by Assistant Minister Anne Ruston and the staffs of the Department of Agriculture and Water Resources during this consultation with the wine industry.

Following strong concerns expressed after the release of the budget papers, it has been heartening that the government has recognised that there would be major problems with the proposed eligibility measures, and that it is willing to listen to alternatives that will result in restoration of integrity to the tax system without damaging valuable regional wine businesses.

Australian Vignerons records its appreciation with this process. It speaks on behalf of a significant proportion of the wine industry and looks forward to working with the government in crafting and implementing a more rational and equitable system.

We also offer important new ideas to promote international sales of Australian wine and the promotional of regional wine based tourism.

*For clarification or questions about the views expressed in this paper, please contact:*

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1. “Wine Equalisation Tax Rebate: Tightened Eligibility Criteria”, September 2016 [↑](#footnote-ref-1)
2. “Actions for Industry Profitability 2014 – 2016”, WFA, 2013. [↑](#footnote-ref-2)