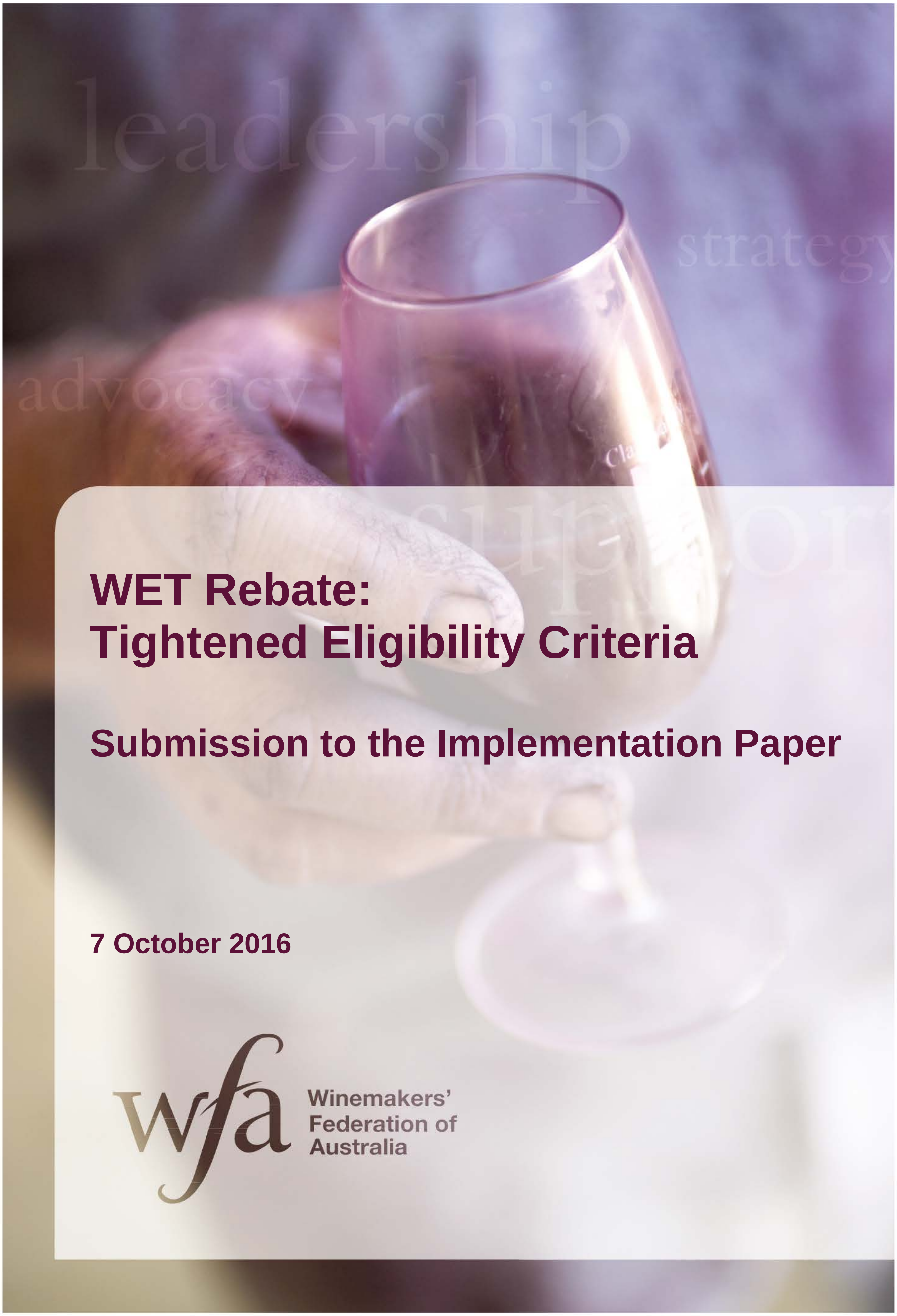

WET Rebate: Tightened Eligibility Criteria

Submission to the Implementation Paper

7 October 2016

Winemakers' Federation of Australia

Contents

1. Introduction

On 2 September 2016, the Government released an implementation paper on the budget measures concerning eligibility criteria. This paper sets out the Government's proposed approach to implement the tightened eligibility criteria, giving consideration to these issues. The eligibility criteria would be given effect through the definitions of an 'eligible producer' and 'Rebatable wine' in the WET Act. The Government has sought the wine industry's views on the proposed implementation approach with submissions due by 7 October 2016.

The Winemakers' Federation of Australia (WFA) is pleased to make this submission to the Federal Government's Implementation Paper on the *Wine Equalisation Tax (WET) rebate: Tightened Eligibility Criteria*, *Implementation Paper, September 2016* (the Implementation Paper).

Our members are supportive of Government reform that restores the integrity of the rebate and delivers its original policy intent. Our comments on the Government's proposed approach detailed in this submission have been developed from extensive consultation with our members, with state and regional associations and our representative participation in all state consultation meetings, including the national meeting on the approaches outlined in the Implementation Paper.

As the national peak body representing winemakers, and with the support of all state wine industry associations, we previously called on the Government to better align the rebate's originally intended purpose and benefits to support the future sustainability of the wine industry[1].

At all times we have sought to work collaboratively and cooperatively with the Government and other Parliamentary representatives to ensure that policy and decision-makers clearly understand the impacts (both positive and negative) of reforming the WET rebate on the Australian wine industry.

The WFA welcomed the Government's Budget 2016 announcement on 3 May to implement WET rebate eligibility reforms as well as the allocation of $50 million to Wine Australia to focus on export market growth. However, at the time, we also raised concerns about the decision to progressively reduce the WET rebate cap from $500,000 to $290,000 commencing on 1 July 2017 as well as the delay in removing the rebate eligibility for bulk and unbranded wine.

We will address the eligibility issues raised in the Implementation Paper below.

We have also been greatly encouraged about the positive discussions in the consultation period. We have been particularly pleased by the cooperative nature of the discussions and the leadership provided by Senator the Hon Anne Ruston and The Hon Kelly O'Dwyer MP, their staff and officials from the Department of Treasury, the Australian Taxation office and the Department of Agriculture and Water Resources. We believe that these discussions have led to a potential outcome which will protect the integrity of the rebate, provide surety to the sector and maintain a revenue flow to the government.

WFA remains committed to the reform of the WET Rebate system to allow its maintenance into the future while protecting its integrity.

[1] WFA and Wine Grape Growers Australia [now Australian Vignerons] Joint Submission to the WET Rebate Discussion Paper, 11 September 2015

The reforms must enable genuine rural and regional wine industry participants to continue to invest in their businesses, staff and regional communities by legitimately gaining access to the rebate specifically targeted to support innovation, investment and growth in our industry.

In summary, the WFA's preferred position on changes to WET eligibility criteria is as follows:

<u>Rebatable wine:</u>

Packaged wine is wine that is packaged in a container not exceeding 5 litres in a form fit for retail sale. Branded wine is wine that is labelled with the wine producer's registered trademark.

Packaged wine with licenced trademarks should not eligible for the rebate.

<u>Eligible producer:</u>

Ownership of the grapes at the crusher through to the final packaged product.

<u>Timing</u>

- *Moving forward the implementation of tightened eligibility to 1 July 2017 or 1 July 2018.*
- *Moving this forward could be coupled with an economic impact analysis on the cap reduction to be undertaken by ABARES.*
- *Defer the introduction of the cap reduction*

We also recognise that during the consultation phase a package of measures has been proposed that incorporates elements of the above position. WFA is supportive of the package to tighten eligibility for the WET rebate and to refocus the cap if required. We recognise that these are broad positions and have made further comments in the body of this submission around definitions, timing of changes and compliance. We welcome further opportunities to work with Government on refining these criteria once an overall decision is made on the eligibility reforms.

We also note that we do not wish to repeat our detailed analysis from our earlier submissions and refer the Government to those.

Lastly, we note that the industry has been operating within an uncertain policy environment regarding WET eligibility changes for some time. We believe it is now important to make a clear decision on WET rebate eligibility into the future, to enable all members of the wine industry to make adjustments where needed and to plan for a sustainable and profitable business in both the domestic and international marketplace.

Tony Battaglene
Chief Executive Officer
Winemakers' Federation of Australia

2. Background

In the 2016-17 Budget, the Government announced that it would:

- provide $50 million over four years to the Australian Grape and Wine Authority to promote Australian wine overseas and wine tourism within Australia;
- strengthen the associated producer rules in WET legislation to help stop multiple claims for the WET rebate by complex structures of associated businesses;
- from 1 July 2017, reduce the WET rebate cap from $500,000 to $350,000 and from 1 July 2018 to $290,000; and
- from 1 July 2019, apply tightened eligibility criteria where a wine producer must own or lease a winery and sell branded, packaged wine domestically, with final details settled through consultation.

Following the Budget announcement, the Assistant Minister for Agriculture and Water Resources met with stakeholders in the major wine regions to obtain feedback from the industry. The Government has recognised the following issues:

- removing the rebate from bulk and unbranded wine is an important driver to industry's restructure and industry would like it to happen as soon as possible;
- the industry utilises a range of wine production models and that production models are changing, such as the increasing incidence of multiple wine producers using central winemaking facilities;
- some stakeholders have asked if eligibility can focus on wine producers who own the grapes throughout the manufacturing process and have substantial investment in the wine industry, such as ownership of a winery, vineyard or cellar door.

In previous submissions to the Government[2], WFA identified changes required to ensure the WET rebate continues to deliver its original policy intent, namely to support local grape and wine businesses and wine regions. This included restricting future rebate eligibility to grape and wine businesses (regardless of nationality) with an investment in regional Australia and who have a long-term commitment to the industry in supporting branded wine product. These principles continue to underlie our response to the proposed rebate eligibility reforms.

WFA believes that bulk, unpackaged, unbranded wine that is only facilitated by artificially low on-sell prices and topped up by WET rebate receipts, both impoverishes winegrape growers and diminishes the ability of winemakers to build brand equity and margins with retailers and consumers. Changes to eligibility that exclude bulk and unbranded wine will encourage the re-emergence of 'brand power' and equity which is critical to capturing above inflation retail price increases, increased margin share with retailers, higher grape prices and reinvestment back into rural communities.

'Cleanskins' and unbranded wine work against these objectives and therefore do not play a long-term role in encouraging sustained regional investment or development.

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[2] http://www.wfa.org.au/assets/submissions/WFA-Senate-Inquiry-Submission-Sep-15-Final.pdf
http://www.wfa.org.au/assets/submissions/FINALWFA-and-WGGA-Draft-Joint-Submission-to-the-WET-Rebate-Discussion-Paper-11-Sept.pdf

They crowd the domestic market with low equity offerings sourced from contract-made wine made from grapes which are uncommercial to the retailer utilising the quoting provisions available within the WET arrangements. This includes the supply of bulk wine for the home brands of wine retailers. This not only pulls down the pricing for both grapes and wine, it also delays the correction to the supply-demand imbalance.

The Australian wine sector (wine grape growing, wine making and wine related tourism) supports 172,736 full and part-time jobs, most located in regional Australia. The income generated from this employment totals $10.4 billion.[3]

The wine sector contributes $40.2 billion to the value of gross output for Australia and adds $19.7 billion in value-added to the Australian economy. Every additional $1 million of value-added generated by the wine sector delivers and extra $2.17 million to the economy. Australian wine producers continue to play a critical role in the socio-economic fabric of regional communities, particularly in regards to tourism and regional employment, and the rebate continues to support regional Australia

There has never been a better time to implement reforms to the rebate and invest in export promotion and regional tourism. The fall in the Australian dollar, recovery in consumer confidence in key export markets have given us an opportunity for growth. However, the reforms must be appropriate and targeted.

3. Rebatable wine: Packaged and branded wine

Proposed position in the Implementation Paper

> *Packaged wine is wine that is packaged in a container not exceeding 5 litres in a form fit for retail sale. Branded wine is wine that is labelled with a wine producer's trademark.*

The Implementation Paper notes that the 5 litre limit reflects the WFA and the WET Rebate Consultative Group recommendations, noting that cider and perry are sold in larger containers (30-50 litres).

The Paper also notes the Government could allow both registered and common law trademarks but exclude licenced trademarks to prevent exploitation by large retailers.

The 5 litre limit is consistent with the recommendations by the Winemakers' Federation of Australia and the WET Rebate Consultative Group.

The additional element of requiring wine to be in a form fit for retail sale reduces risk of exploitation of the proposed packaging requirement. To comply with this element, wine must be sealed in its final packaging, be labelled in accordance with the requirements under the *Australian Grape and Wine Authority Act 2013* and the Food Standards Code and be labelled with a brand.

[3] AgEconPlus

'Brand'

This proposed position could allow both registered and common law trademarks. This would accommodate wine brands in Australia. It could exclude licenced trademarks to prevent exploitation by large retailers which create many trademarks which they then licence out to their subsidiary wine producers. Although this was not the exact position originally proposed by WFA, it reflects the position that the product is labelled with a brand wholly owned by or licenced exclusively to the producer.

The Government asks the question for Rebatable wine, is the proposed definition of packaged and branded wine appropriate? If a trademark approach is used, what types of trademarks should be permitted (e.g. exclusively licensed trademarks) and what would be the impact?

Registered trademarks are widely used by many companies and are registered under the *Trade Marks Act 1995* with IP Australia which provides the owner legal ownership of the mark and exclusive rights to use the mark nationwide. Some small producers use common law trademarks, but wine producer start-ups are unlikely to have a common law trademark as they would not have developed a reputation in the region.

However, WFA believes that genuine producers should protect their brand through a registered trademark and support the adoption of such a provision. This provides a further test for investment in the industry as hobby farmers are unlikely to register a trademark.

An additional consideration is whether brands with licensed trademarks would be eligible. A licensed trademark is where a trademark owner (licensor) permits another party (licensee) to use its trademark. WFA and the Consultative Group suggested that the branding restriction include wine labelled with a brand wholly owned by, or licensed exclusively, to the producer of the wine. That is by having the exclusivity requirement, the licence can't be used by several entities which would undermine the concept of a brand.

This is consistent with the WFA position to not permit licenced trademarks, as WFA believes that these are a potential problem leading to the unsustainable growth in the WET rebate Retail Market Power.

WET Rebate growth

It is accepted by the Wine Industry and the Government that most of the WET Rebate growth to non-intended businesses occurs through bulk wine sales, and making bulk wine sales over 5 litres ineligible to claim the WET rebate will save the Federal Government a minimum $58 million/year although the Industry believes that this figure will be much higher.

Large retailers also increase their margins by purchase of bulk wine from producers (winemakers and vineyard owners) for supply to their brands and the producer will have to meet a certain dictated bulk wine purchase price in order for the retailer to achieve the required margin of 50% to 65% detailed above.

Notwithstanding that these sales will not be eligible for the WET Rebate in the future, the retailer might licence their brand to the producer to enable the producer to claim the WET Rebate and in return lower its bulk wine sale price to the retailer.

The proposed eligibility change that the producer must own a registered trademark to receive the WET Rebate will ensure that the retailer and producer can't manipulate their arrangements to allow the producer to claim the WET Rebate.

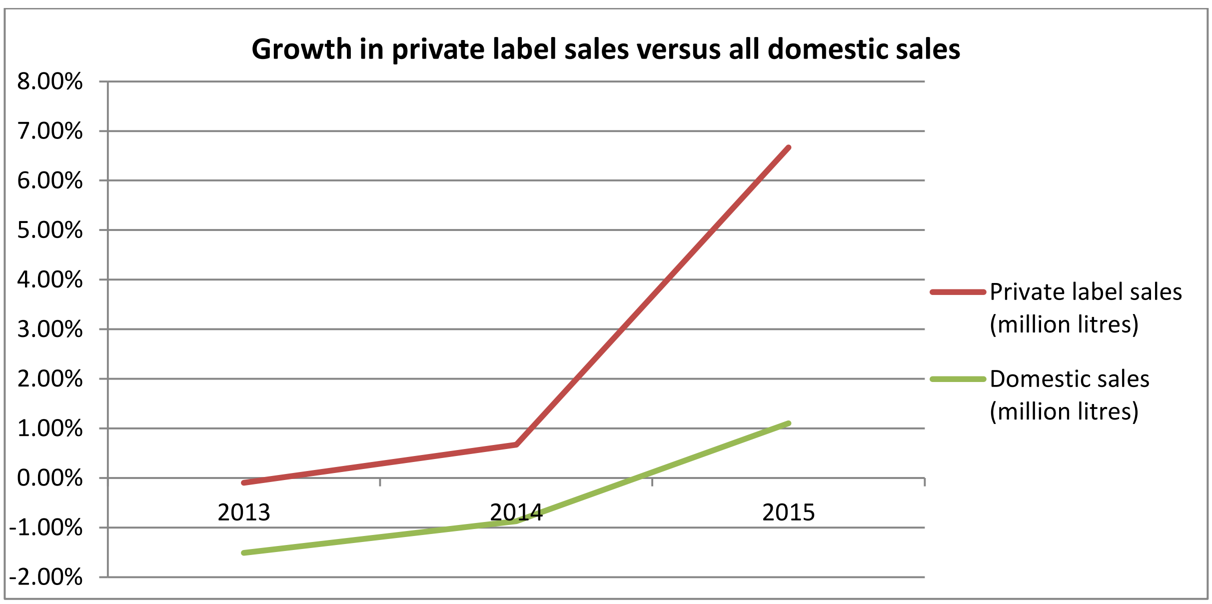
Sales of unbranded/cleanskin wine will also be ineligible to claim the WET Rebate which will save the Government a further $15 million/year.

It should be noted that the above arrangements with retailers have distorted the market and led to significant wine retail price decreases and sector will be potentially in a much healthier state when the above changes are made.

The rebate's role in supporting 'sticky supply' and low grape and wine prices

The rebate also underpins grape production that would otherwise be unprofitable and hence it delays the correction in the supply-demand imbalance and places downward pressure on grape and wine prices. This dynamic has helped drive the production of low equity brands and 'clean skins' and has seen many out-of-contract grape producers converting their grapes to finished wine (via contract winemaking). This wine is highly likely to attract the WET rebate, with the deferral of the WET liability to the retailer (utilising 'quoting' provisions available within the WET arrangements). The lack of security of sale of wine grapes during the current difficult trading conditions is therefore increasing the number of WET rebate claims.

The availability of the rebate to growers and winemakers to convert unprofitable grapes into bulk wine has helped drive the proliferation of low equity brands in recent years which has in turn put downward pressure on the margins and profitability of traditional brand owners.

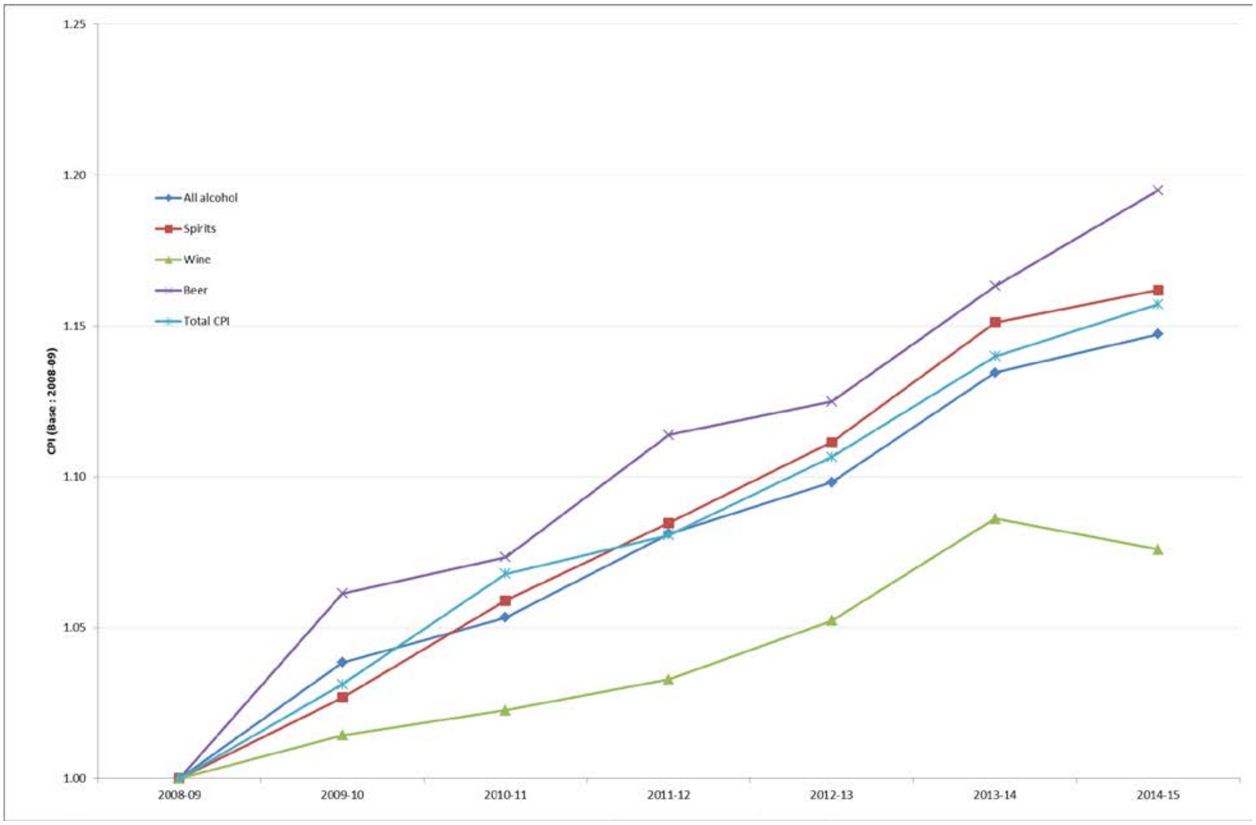


Source: ABS Domestic Sales and Wine Australia.

The ability of private label (home brand) sales (red line) to grow by 7% between 2013 and 2015 in a difficult economic environment compared to near flat growth in volume for ALL domestic sales (green line) is telling. This is attributable to the retailer's vertically integrated business models and the leverage the WET rebate gives them when negotiating the purchasing price for bulk wine for their home brands.

The retailer as the purchaser is effectively able to access the rebate as many times as they have supplier agreements for bulk wine destined for their home brands.

The ability of suppliers of bulk and unbranded wine to claim the rebate and to underwrite the production of otherwise uncommercial grapes has the flow on impact of effectively setting a retail 'floor price' on all wine and a retail culture of endless 'discounting' in a crowded and oversupplied domestic market. Combined with the impacts of retail consolidation, this translates into poorer margins for all branded winemakers and grape producers. Retail pricing growth for wine has remained flat for many years compared to both CPI and other alcohol categories and is not sustainable. (See graph below)



Source: ABS Catalogue 6401.0 - Consumer Price Index, Australia, June 2015

With regard to the proposal arising from the consultations to allow the rebate to be paid only on wine where the WET has been paid, if the details of such a proposal clearly demonstrated that it met the criteria of delivering the original policy intent of the rebate and led to sustainable profitability and was easier to administer, then WFA would support it..

4. Eligible producers: Owning or leasing a winery

The discussion paper raises two options for eligible producers.

One option is to link the eligibility to ownership of the winery as proposed in Budget2016. Under this position, the definition of a winery is that used for the purposes of the Wine Grapes Levy, contained in the *Primary Industries (Excise) Levies Act 1999 - A winery is a premise where the quantity of fresh grapes used in the manufacture of wine is not less than 5 tonnes in a year.*

This Act defines a premise as a winery if the quantity of fresh grapes or fresh grape equivalent (of dried grapes, grape juice and/or concentrated grape juice) used in the manufacture of wine at those premises during that year, or either of the immediately preceding two years, amounts, or amounted, to not less than 5 tonnes. Grapes and grape juice are taken to have been used in the manufacture of wine if they are subjected to any wine making process (excluding crushing and the concentration of grape juice), whether or not that process or any other wine making process is completed.

This legislative definition is quite broad — while it excludes crushing, it would include packaging. It also includes manufacturing brandy as part of the wine making process, which would need to be excluded as it is subject to the excise system. The separate packaging requirement to access the WET rebate deals with the final stages of the wine making process and it may be appropriate to exclude this step from the definition of the wine making process for the purposes of defining a winery. Under this approach, a premise where fermentation, clarification, blending or aging occurs would be deemed to be a winery subject to the 5 tonne requirement.

Under this definition, there are a large number of potential recipients. For example, in 2011-12 there were 3300 agents who paid the wine grape levy, of who 1800 produced between 5-10 tonnes.

An alternative way of defining a winery is by reference to assets as a winery will need to possess certain equipment such as tanks and barrels to undertake the wine making process. Adopting this approach would require a detailed specification of physical assets as well as determining issues such as the appropriate size and numbers before a premise can be deemed a winery.

This definition would be complex and open to manipulation.

Once it is established that a place is a winery, the second stage involves determining whether an entity owns or holds a long term lease over the winery. Definitions of ownership and control could be based on existing tax legislation and leasing requirements could be flexible to accommodate industry practices. This requirement is intended to ensure that those that claim the WET rebate have a tangible investment in the wine industry.

The Government has suggested a minimum three year period could be used to satisfy the interest in a winery test. The lease would need to cover the winery—or part of the winery—itself, and does not include contracting out the winemaking service.

Skin-in-the game test

The Government recognises that there is a range of wine production models in the industry, including grape growers who have a real investment in the wine making industry, but may not own equipment for manufacturing wine. By introducing an ownership or leasing test over a winery, this could exclude those that might be normally considered to have a stake in the wine making industry, which could be argued is contrary to the policy intent of providing access to the WET rebate to those that have an investment in the wine making industry.

A less stringent requirement compared to owning or holding a long term lease over a winery could be that an entity would need to have a significant interest in a winery or in the wine making industry. While this approach is consistent with the policy objective, a significant interest test may be difficult to implement and administer and could easily be circumvented.

In the Consultative Group's report on the Wine Equalisation Tax Rebate of October 2015, there was a recommendation that as part of amending the definition of a wine producer, an entity would need to own or lease one out of three of a vineyard; winery (production facilities or fermentation facilities); or cellar door outlet. However, as noted in the report, there was some divergence in views held about the 'one out of three' test and that a 'two out of three' test should be preferred.

An alternative approach raised in the discussion paper is to require a wine producer to retain ownership of the grapes throughout the winemaking process (whether it's made by the wine producer at its own premises or it contracts out the winemaking) and own or lease one of either a winery, vineyard or cellar door. If such an approach is adopted, there would also be a need to define vineyard and cellar door.

This has been part of the discussions with the State and Regions, where the need for a skin-in-the game test has been questioned or whether product eligibility will suffice.

WFA position

A number of options are raised in the discussion paper concerning owning or leasing a winery as a suitable test for eligibility for the rebate. WFA believes that this is not an appropriate test as it does not reflect the current business models in the industry. WFA believes that any asset test has the potential to further distort the market place and may have the perverse outcome of encouraging inefficient business structures.

WFA believes that eligibility criteria should not restrict access to producers that have a legitimate business model in the Industry and therefore should continue to claim the WET Rebate.

The common policy principle around eligibility is that any measure must be simple. The criteria must be easily definable, cost effective to enforce and recognise the wide variety of business models in the sector.

WFA believes that an asset test may lead to further distortions. The Australian Wine Industry has evolved into a multi layered, multi-faceted and complex industry which has excess vineyard plantings, excess winemaking capacity and excess bottling capability.

It is imperative that future investment in the Industry is weighted toward brand development, packaging innovation and marketing to maximise Australian wine sales potential in domestic and international markets.

If an asset test becomes part of the eligibility criteria to claim the WET Rebate this could lead to a massive investment distortion which ultimately leads to decreased efficiency and higher COGs.

Our view is that the principles put forward in the Government Implementation paper were designed to improve flexibility and recognise the variety of business models in the industry, however, it was felt that they are too complex and it was questioned whether these criteria for an eligible producer are necessary given the proposals to remove the WET Rebate eligibility for bulk and unbranded wine by changing the legislative definition of Rebatable wine.

The current definition of an eligible producer to access the WET Rebate under the legislation is that a producer must do the following:

- *manufacture the wine from grapes, other fruit, vegetables or honey you produce or purchase*
- *provide the grapes, other fruit, vegetables or honey to a contract winemaker to be made into wine on your behalf*
- *subject your wine to a process of manufacture – for example, manufacturing finished wine from raw wine, or blending wines to make a commercially distinct wine (but you must reduce your claim by any earlier producer rebates).*

You are not a producer if, for example, you simply purchase bulk wine and bottle it for sale.

The Industry position is that, providing dot point three was clarified to prevent the purchase of bulk wine, and blending it with another purchase of bulk wine to make a product eligible for the WET Rebate and bulk and unbranded wine was excluded from the WET Rebate and Rebatable wine was restricted to packaged, labelled product ready for retail sale, then there is no need to separately define an eligible producer, for example, by way of an assets test.

We believe the simple solution is to remove dot points 1 and 2 above, and for dot point 3 above to be changed to include a percentage of “own grape” test:

> .. ***subject your wine to a process of manufacture - where manufacturing finished wine is from wine produced from grapes owned or controlled at the crusher, and blended with no more than [x%] of wine from other sources to tolerate seasonal and style influences.***

During the consultation, this concept met with broad agreement and an 85% test rule was proposed by government (where 85% of the grapes used must be owned or controlled at the crusher by the producer of the final branded product). It was felt that an 85% rule was consistent with current Label Integrity Provisions (LIP) administered by the Australian Grape and Wine Authority.

While 85% is quite a strict provision, industry supported its adoption provided there were no additional asset tests. The WFA view was that additional asset tests were difficult to administer, complex to enforce and potentially distortionary.

WFA would however suggest that the 85% rule could be qualified to refer to a four year rolling average to smooth out agricultural uncertainties in grape production and/or an exceptional circumstances provision in case of a sever climatic event such as drought, flood or frost that wipes out a considerable proportion of production.

For example, Victoria and South Australia had a horrific frost event in 2006 which resulted in significantly decreased yields for the 2007 vintage. For example, one producer - Tahbilk harvested around 25% of normal crop and, therefore, had to purchase a lot of bulk wine to blend with its “own grape” wine to meet market demand. A similar frost occurred in 2013 which resulted in significantly decreased 2014 vintage crops.

This eligibility criterion is easily auditable by the ATO Compliance Division due to LIP.

Concerns have been raised that having the “owned grape” wine as the only criteria will stop rorting by virtual winemakers. The reality is that a virtual brand owner who:

- owns no vineyards but may have a contract with a grape grower;
- owns no processing facility but has wine made under contract; and
- owns no cellar door facility but sells wine by way of a wine club or direct to the trade.
    - still has to invest in stock (grapes, bulk wine and bottled wine) which can be significant.

To say that a virtual brand owner has no “tangible investment” in the Wine Industry is simply not true.

Examples of virtual winemakers: Wolf Blass, Jeff Grosset, Geoff Merrill, Andrew Garrett and Peter Lehmann, to name but a few, who have gone on to become household names and ultimately developed substantial vineyard and winery assets when they could afford to invest.

It’s imperative that future investment in the Industry is weighted toward brand development, packaging innovation and marketing to maximise Australian wine sale potential in domestic and international markets not in developing assets that are already in excess of Industry needs.

There are a number of legitimate wine businesses who contract vineyards, buy grapes, buy wine and have wine contract made and bottled by local vignerons/businesses in their region. Local carriers take their products to market - be it domestic or export.

Many have grown their businesses strongly in the domestic and international markets, since launching, and could not have achieved this without the help of the WET rebate which in part has subsidised export market development and sales growth.

There is a view that if these businesses did not come into existence that the Australian Wine Industry would be much worse off than it currently is.

It should be noted that their continued viability assists both local vineyard owners and the owners of wineries to keep their heads above water.

Many small wineries utilise a fraction of their winery's capacity for their own brands and needs. Their profitability is underpinned by some contract processing which utilises their capacity and reduces their overall cost per tonne of operation. These wineries, who are “genuine” winemakers in the traditional sense of the word, would be decimated if they lost their contract business although, ironically, still eligible to receive the WET Rebate.

Most virtual winemakers are small. They are usually working for another winemaker and do not have the capital available initially to substantially grow their brand. Their current WET Rebate claims are small.

The only rorting that might occur would be from individuals or corporates of substance that are lured by the opportunity to claim a significant WET Rebate. It would not be worth their time and effort to invest in stock simply to claim a small WET Rebate.

It takes a long time and is costly to launch and establish a brand in the domestic and export markets, there is no such thing as an overnight success in the Wine Industry, and from a practical perspective the only possibility of creating a brand and instantly achieving significant sales success, to ensure a significant WET Rebate can be claimed, is to enter into an arrangement with a major retailer.

5. Date for introduction for tightened eligibility

The third question raised in the discussion paper concerned the impact date of the tightened eligibility criteria. Under the budget the following timing was proposed:

Ten Year Enterprise Tax Plan — wine equalisation tax rebate integrity and wine tourism funding

Revenue ($m)

	2015-16	2016-17	2017-18	2018-19	2019-20
Australian Taxation Office	-	-	50.0	70.0	180.0
Australian Grape and Wine Authority	*-*	*2.0*	*16.0*	*15.9*	*16.1*

The Government will address integrity concerns with the wine equalisation tax (WET) rebate by reducing the WET rebate cap and tightening eligibility criteria.

The Government will reduce the WET rebate cap from $500,000 to $350,000 on 1 July 2017 and to $290,000 on 1 July 2018 and introduce tightened eligibility criteria which will apply from 1 July 2019. This measure will better target assistance and reduce distortions in the wine industry.

The Government will also provide $50.0 million over four years to the Australian Grape and Wine Authority to promote wine tourism within Australia and Australian wine overseas to benefit regional wine producing communities.

This measure is estimated to have a gain to the Budget of $250.0 million over the forward estimates period.

This measure forms part of the Government's Ten Year Enterprise Tax Plan, which will encourage Australians to work, save and invest.

There are several options surrounding the implementation date to take to Government. These include:

- Moving forward the implementation of tightened eligibility to 1 July 2017 or 1 July 2018.
- Moving this forward could be coupled with a request for an economic impact analysis on the cap reduction to be undertaken by ABARES.

The timing of the measures was not explicitly addressed in the implementation paper, although it has been a topic of discussion throughout the consultation phase.

This has identified that the rebate was originally intended to assist smaller producers to remain in business, so that diversity in wine styles is maintained and to secure the positive economic impact of wine enterprises in regional communities. The Explanatory Memorandum to the relevant legislation that introduced the current producer rebate system in 2004 stated, “Around 90% of wine producers will be able to fully offset their WET liability by accessing the new rebate. In particular, small wine producers in rural and regional Australia will benefit significantly…”.

As summarised by the Australian National Audit Office, the rebate was introduced “in recognition of the substantial financial hardship being faced by small rural and regional wineries and aimed to support their viability and consequent capacity to generate employment and wealth in local communities.”

In 2011/12 some $282mm of rebate was shared among at least 1,912 Australian claimants. In the same year 205 New Zealand claimants received $25m in WET rebates.

The consultation with Industry has confirmed that the rebate remains an important revenue source for small and medium winemakers who are struggling with a decline in export sales and intense competition in the domestic market. It is clear that without the rebate a significant number of wine businesses would be severely impacted financially. Whether originally intended or not, the rebate has been factored into business models and pricing strategies at all points in the supply chain.

The consultation has also confirmed that there are widespread concerns in Industry that the WET rebate has evolved beyond its original intent and is being compromised by the ability of brokers, intermediaries and foreign-based entities to access the entitlement. There are also reports of non-commercial multi-party schemes and ventures. Between 2007/08 and 2011/12 ATO data indicates an increase of 21% or 365 in the number of rebate claimants with refunds increasing over the same period from $211m to $308m.

We understand that the Government view is that the level of the rebate is an integrity measure and that the rebate at the level of $500,000 is an incentive to distort the intent of the rebate.

WFA believes that the level of the rebate at $500,000 is appropriate and provides an appropriate level of support for rural and regional Australia. However, one of the suggestions arising out of the consultation period was a re-focusing of the rebate to return it towards it original intent to support rural and regional producers through a rebate on direct to consumer sales. The proposal as we understand it is as follows:

- *Bring forward the new product criteria from 1 July 2019 to 1 July 2017.*
  - *This would require a grandfathering of existing product in tank and 2017 vintage to enable its eligibility and prevent retrospective taxation. The proposal is this grandfathering would expire on 1 July 2018.*

- *Bring forward the eligible producer definition from 1 July 2019 to 1 July 2018.*
- *Push out the cap reduction to 1 July 2018, and restructure the cap so that $350,000 is for eligible sales and a further $150,000 is available as a 'top-up' for direct to consumer sales.*
- *The cap is reduced to $290,000 on 1 July 2019 and $210,000 is available as a 'top-up' for direct to consumer sales.*
- *A physical cellar door (yet to be defined) would have to be present to claim the top-up component of the re-focused WET rebate.*

WFA could support such a proposal as a package of implementation measures to reform the WET Rebate system.

6. Conclusion

WFA and Australian Vignerons (previously Wine Grape Growers Australia), with the support of all State wine organisations agree that the WET rebate should be retained but reformed. We believe that the package of measures that was discussed through the consultation phase has provided a suitable pathway forward to reforming the rebate, overcoming the unsustainable growth in the rebate and refocusing it towards its original intent.

We do not believe that bulk, unpackaged, unbranded wine and private label wine should be eligible for the rebate as, over the long-term, they do not support regional development, and they diminish the ability to build brand equity and margins with retailers and consumers.

WFA believes that bringing forward the elimination of bulk and unbranded product from eligibility for the WET Rebate will save between $100-200 million. WFA believes that there will be further budget savings from tightened eligibility provisions identified in the consultation and even more saving from re-focusing the cap. These savings should exceed the projected savings in the forward estimates from Budget2016.

Australia continues to produce wine products that are among the world's best across all price points. With industry working together with government, we can help individual wine businesses succeed and take our product to the domestic and global consumer at prices that better reflect its intrinsic worth.

We look forward to your consideration of our submission and working with industry on recovery and growth

/ENDS