Chapter 2

Wine equalisation tax rebate

2.1 This chapter considers the impact and application of the wine equalisation tax rebate on grape and wine industry supply chains.

2.2 Alcohol has attracted various customs and excise duties in Australia since before federation. Colonial administrators raised revenue through imposing 'sin taxes' on goods such as tobacco and most alcohol.[1] Since then, state and federal governments have applied different levels of tax to alcohol according to product type, value and packaging, alcohol content and size of producer.[2]

2.3 In the 2014–15 financial year, the Australian Government collected $6 billion in alcohol taxation receipts, which was approximately 0.4 per cent of GDP. Of that, wine contributed approximately $792 million or 13.2 per cent, at 0.05 per cent of GDP.[3]

2.4 Wine has a history of being taxed differently to other alcohol.[4] The excise duty applied more broadly including to beer and spirits was only briefly applied to wine between 1970 and 1972 and removed due to its political unpopularity.[5] In 1974, wholesale sales tax at 10 per cent was specifically applied to wine and increased by successive governments, reaching 41 per cent in 1997.[6]

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1 Sam Reinhardt and Lee Steel, 'A brief history of Australia's tax system', Paper presented to 22nd APEC Finance Ministers' Technical Working Group Meeting, Vietnam, 15 June 2006, http://archive.treasury.gov.au/documents/1156/HTML/docshell.asp?URL=01_Brief_History.asp (accessed 8 November 2015).

2 FARE, *Submission 22*, p. 6. Wholesale sales tax, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/pre1996/q_balance/report/c03/

3 Australia Parliament Parliamentary Budget Office, *Alcohol taxation in Australia*, report 3 of 2015, pp 1–2.

4 *Australia's future tax system – Report to the Treasurer*, part 2 volume 2, p. 431, http://taxreview.treasury.gov.au/content/downloads/final_report_part_2/AFTS_Final_Report_Part_2_Vol_2_Consolidated.pdf (accessed 10 November 2015).

5 Professor Kym Anderson, 'Excise and Import Taxes on Wine, Beer and Spirits: An International Comparison, presented 8–9 February 2010 at Adelaide Convention Centre, p. 6, https://www.adelaide.edu.au/wine-econ/events/2030workshop/pubs/AndersonTaxes_WC0210.pdf (accessed 8 November 2015).

6 Australian Government The Treasury, *Wine equalisation tax rebate: Discussion paper*, August 2015, p. 3.

2.5 The wine equalisation tax (WET) came into effect in 1999 alongside the GST, replacing wholesale sales tax.[7] Under the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) as introduced, wholesale and distributor sales of wine and grape products attracted a sales tax of 29 per cent of their wholesale value.[8]

2.6 The Australian National Audit Office notes the 'considerable complexity in calculating the wine tax.'[9] In effect, the rate was intended to continue the wholesale sales tax:

> The rate of WET of 29 per cent was designed so that it would, with the addition of 10 per cent GST, be equivalent to the WST rate of 41 per cent. This ensured that both the retail price of wine and the revenue from wine tax remained relatively stable.[10]

2.7 The Department of Industry and Science submitted that the WET 'generally applies to the last wholesale sale (usually between the wholesaler and the retailer) although it may apply in other circumstances.'[11]

Cellar door rebate scheme

2.8 A 14 per cent rebate 'for cellar door and mail order sales up to a wholesale value of $300 000 per annum' was introduced alongside the GST.[12] The cellar door rebate was established 'to provide assistance to small and medium sized winemakers and to promote tourism in regional areas through increased incentives to open cellar doors.'[13] The supplementary explanatory memorandum stated:

> The Government’s policy objective is to assist winemakers who make retail sales directly to unlicensed people from the cellar door or via mail order and who use their product in application to own use.[14]

2.9 In most Australian states, the cellar door rebate supplemented state government cellar door subsidies of around 15 per cent,[15] although the committee has

7 Mr Ken Helm AM, *Submission* 25, p. 1.

8 Department of Industry and Science, *Submission 19*, p. 11.

9 Australian National Audit Office, *Administration of the Wine Equalisation Tax,* Audit Report No. 20 2010, 14 December 2010, p. 28.

10 The Hon Peter Costello, Treasurer, A New Tax System (Wine Equalisation) Bill 1999, 24 March 1999, p. 4182 in Australian Government The Treasury, *Wine equalisation tax rebate: Discussion paper*, August 2015, p. 3.

11 Department of Industry and Science, *Submission 19*, p. 11.

12 WFA, *Submission 41*, p. 32; Supplementary Explanatory Memorandum, Indirect Tax Legislation Amendment Bill 2000, paragraph 2.46.

13 WFA, *Submission 41*, p. 33.

14 Supplementary Explanatory Memorandum, Indirect Tax Legislation Amendment Bill 2000, paragraph 2.25.

heard that the Western Australian subsidy has since been repealed[16] and Tasmania never provided one.[17]

WET rebate scheme

2.10 The WET rebate replaced the cellar door rebate from 1 October 2004, allowing some producers to 'fully offset' the WET they paid on wine. The new scheme enabled producers to claim:

> (a) for wholesale sales, 29 per cent of the price for which the wine is sold (excluding wine tax and GST).
>
> (b) for retail sales and AOUs [applications to own use], 29 per cent of the notional wholesale selling price of the wine.[18]

2.11 The rebate was initially limited to $290 000 per financial year,[19] allowing each eligible producer to sell wine valuing $1 million before paying WET.[20]

2.12 Rural and regional Australia was a particular focus of the new scheme, as stated in the explanatory memorandum:

> 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, receiving around 85% of rebate benefits.[21]

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15 Supplementary Explanatory Memorandum, Indirect Tax Legislation Amendment Bill 2000, paragraphs 2.1–2.2.

16 Mr Redmond Sweeny, President, Wines of Western Australia, *Committee Hansard,* 27 October 2015, p. 11.

17 Mr Jeremy Dineen, Chief Winemaker and General Manager, Josef Chromy Wines, *Committee Hansard,* 25 September 2015, p. 15.

18 Australian Tax Office, *Wine equalisation tax: operation of the producer rebate for other than New Zealand participants*, WETR 2009/2, https://www.ato.gov.au/law/view/document?LocID=%22WTR%2FWT20092%2FNAT%2FATO%22&PiT=99991231235958 (accessed 10 November 2015). See also Department of Industry and Science, *Submission 19,* p. 11.

19 Revised Explanatory Memorandum, Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004, paragraph 1.5.

20 Parliamentary Library, Bills Digest, *Tax Laws Amendment (2006 Measures No. 3) Bill 2006 and New Business Tax System (Untainting Tax) Bill 2006*, 8 August 2006, p. 26.

21 Revised Explanatory Memorandum, *Tax Laws Amendment (Wine Producer Rebate and Other Measures) Act 2004*, paragraph 1.6.

2.13 For the first time, producers of cider, perry and sake became eligible for the rebate, recognising their contribution to regional economies.[22] The Department of Agriculture submitted that in addition to being registered for GST in Australia:

> Eligibility for the producer rebate requires a person to be a producer of wine; that is, they must:
>
> - manufacture the wine from grapes, other fruit/vegetables or honey produced or purchased; or
> - provide the grapes, other fruit, vegetables or honey to a contract winemaker to be made into wine on their behalf.[23]

2.14 The maximum WET rebate was increased to $500 000 from 1 July 2006, lifting the 'effective WET-free threshold' to $1.7 million.[24] The increase reflected a 2006–07 Budget commitment to provide 'enhanced assistance' to the wine industry.[25] The Treasurer's media release described the increase as 'additional support for small and medium sized wine producers', stating that '[w]ine producers form an important part of regional Australia and provide significant employment and tourism benefits.'[26]

2.15 The WET rebate scheme was extended to include New Zealand producers from 1 July 2005.[27] Submitters considered that this was done 'in line with Australia's bilateral trade obligations'.[28] The New Zealand producer rebate is discussed further below.

2.16 The 2004–05 Budget estimated the initial cost of the rebate at $90 million per year, increasing to $100 million in 2007–08.[29] At the time of the increase, additional revenue implications of the increased WET rebate were expected to be $25 million in 2006–07 and up to $35 million in 2009–10.[30] The relevant Bills Digest commented 'it

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22 Supplementary Explanatory Memorandum, *Tax Laws Amendment (Wine Producer Rebate and Other Measures) Act 2004*, paragraph 1.6.

23 Department of Agriculture, *Submission 29*, p. 10.

24 Explanatory Memorandum, *Tax Laws Amendment (2006 Measures No.3) Act 2006*, p. 10; WFA, *Submission 41*, p. 33.

25 Australian Government, Budget Paper No. 2: Budget Measures 2006-07, p. 37.

26 The Hon Peter Costello MP, Treasurer, *Increase in Wine Equalisation Tax (WET) Producer Rebate*, Media Release No. 35, 9 May 2006.

27 Explanatory Memorandum, Tax Laws Amendment (2005 Measures No. 4) Bill 2005, paragraph. 4.4.

28 FARE, *Submission 22*, p. 8; WFA, *Submission 41*, p. 33.

29 Australian Government, Budget Paper No. 1: Budget Measures 2004–05, p. 2–5. Budget Paper No. 2: Budget Measures 2004–05, p. 39.

30 Australian Government, Budget Paper No. 2: Budget Measures 2006-07, p. 37;

is unclear whether this projection includes the expansion of the rebate to the New Zealand wine producers.'[31]

2.17 The committee has heard evidence that WET rebates paid may have exceeded Treasury estimates since as early as 2005–06. WFA provided calculations that suggest that instead of the $90 million forecast,[32] the Government made $134 million in rebate payments in 2005–06. By 2006–07, instead of the forecasted $90 million plus $25 million,[33] there were closer to $200 million in payments.[34] The Department of Agriculture submitted that in 2013–14, approximately $300 million in rebate payments were made,[35] and WFA estimates $340 million for 2014–15.[36]

2.18 WFA described an 'average annual increase of 12%' in WET rebates paid, which contrasts with the downturn in revenue collected from wine tax.[37] For example, the Department of Industry and Science estimates that '[r]evenue was down from a high of $7.65 billion in 2006-07 to a forecast $5.6 billion in 2014-15.'[38]

Treasury Tax White Paper

2.19 In May 2015, the Government announced it would ask the Treasury to prepare a discussion paper on the operation of the WET rebate as part of the Tax White Paper process. The Assistant Treasurer reported that:

> Growers and producers have raised concerns whether the current operation of the WET rebate is continuing to meet the original policy intent.[39]

2.20 The WET Rebate Discussion Paper was released by the Treasury in August 2015, calling for submissions to the Government's appointed WET Rebate Consultative Group which includes representatives of the Treasury, WFA, WGGA, Wines of Western Australia and leading industry representatives.[40]

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31 Parliamentary Library, Bills Digest, *Tax Laws Amendment (2006 Measures No. 3) Bill 2006 and New Business Tax System (Untainting Tax) Bill 2006*, 8 August 2006, p. 26.

32 Australian Government, Budget Paper No. 1: Budget Measures 2004–05, p. 2–5. Budget Paper No. 2: Budget Measures 2004–05, p. 39.

33 Australian Government, Budget Paper No. 2: Budget Measures 2006-07, p. 37.

34 WFA, *Submission 41*, pp 34–5.

35 Department of Agriculture, *Submission 29*, p. 10.

36 WFA, *Submission 41*, p. 35.

37 WFA, *Submission 41*, Appendix G, p. 40.

38 Department of Industry and Science, *Submission 19*, p. 7.

39 The Hon. Josh Frydenberg MP, Assistant Treasurer, *Wine Equalisation Tax rebate discussion paper*, Media release, 5 May 2015, http://jaf.ministers.treasury.gov.au/media-release/022-2015/ (accessed 18 November 2015).

40 Australian Government The Treasury, *Wine Equalisation Tax Rebate*, http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2015/Wine-Equalisation-Tax-Rebate, (accessed 12 November 2015).

2.21 The group will consider submissions and provide advice to the Government on options for reform, and has indicated that a 'Green Paper' will be released in the second half of 2015.[41]

2.22 Wine Tasmania told the committee that there are 'many issues that are not necessarily canvassed' in the discussion paper.[42]

Criticism of the wine equalisation tax

2.23 Some contributors to this inquiry expressed dissatisfaction with the current taxation arrangements for wine.[43] National peak body Wine Grape Growers Australia told the committee that 'the high domestic tax regime is an impediment to industry profitability.'[44] Representing growers and producers, Wine Tasmania urged the committee to consider 'the overarching structure of wine tax.'[45] In a 2010 Audit Report, the Australian National Audit Office noted that there is 'considerable complexity' in calculating the tax on wine,[46] and this complexity was remarked upon by some submitters.[47]

2.24 The committee heard economic and health policy arguments that wine sales should be taxed based on a volumetric basis whereby tax is calculated on the alcohol content of products rather than their value. Treasury Wine Estates argued that the current basis for calculating wine tax disadvantages producers of premium wines who pay more tax than producers of cheaper wines. They argued for 'a flat volumetric tax within the current WET regime.'[48] Director of Group Corporate Affairs Roger Sharp told the committee '[i]t is just nonsensical to us that you have a tax system which effectively penalises you as you produce a more premium product', stating that:

41 Australian Government The Treasury, *Wine equalisation tax rebate: Discussion paper*, August 2015, p. 1.

42 Mr Graeme Lynch, Chair, Wine Industry Tasmania Ltd, *Committee Hansard*, 25 September 2015, p. 21.

43 See, for example, Mr Leo Pech, *Submission 13*, p. 12.

44 Mr Victor Patrick, Chairman, WGGA, *Committee Hansard*, 24 September 2015, p. 33.

45 Ms Sheralee Davies, Chief Executive Officer, Wine Industry Tasmania Ltd, *Committee Hansard*, 25 September 2015, p. 22.

46 Australian National Audit Office, *Administration of the Wine Equalisation Tax,* Audit Report No. 20 2010, 14 December 2010, p. 28.

47 FARE, *Submission 22*, p. 19; South Australian Wine Industry Association Incorporated, *Submission 32*, p. 4; Treasury Wine Estates, *Submission 35*, p. 18; WFA, *Submission 41*, pp 17, 53.

48 Mr Roger Sharp, Director, Group Corporate Affairs, Treasury Wine Estates, *Committee Hansard*, 27 October 2015, p. 34.

> …ultimately the future success and profitability of Australian wine will be achieved by producing higher quality, more premium wines rather than more mass, commoditised grape juice.[49]

2.25 Differently, the not-for-profit Foundation for Alcohol Research and Education (FARE) argued for 'a new wine tax system… based on public policy principles that acknowledge the harmful nature of alcohol'.[50] They submitted that replacing the WET with an excise would increase government revenue and reduce the rate of alcohol consumption and alcohol-related harms.[51] As well as conducting 'benefit cost analysis' in 2012, FARE submitted that:

> …nine separate government reviews have recommended overhauling the wine taxation system, including the Henry Review which determined that reforming the WET was a matter of urgency for the Australian Government.[52]

2.26 Of the reports cited by FARE, only the Australia's Future Tax System (Henry review) panel of 2009 found that the 'the wine equalisation tax, currently designed as a value-based revenue-raising tax, is not well suited to reducing social harm.'[53] The report recommended transition to a volumetric tax on alcohol, converging over time to a single rate.[54]

2.27 Different to the Henry review, the 1995 Committee of Inquiry into the Winegrape and Wine Industry had recommended a 'composite tax' with value-based and volume-based components,[55] and the 2011 Western Australian Education and Health Standing Committee report recommended that state and federal governments negotiate on 'introducing a tiered volumetric tax in addition to a minimum retail price per standard drink.'[56]

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49 Mr Roger Sharp, Director, Group Corporate Affairs, Treasury Wine Estates, *Committee Hansard*, 27 October 2015, p. 39.

50 FARE, *Submission 22*, p. 19.

51 FARE, *Submission 22*, p. 11.

52 FARE, *Submission 22*, p. 4; Australia's future tax system review, *Report to the Treasurer*, December 2009, p. 443, http://taxreview.treasury.gov.au/content/downloads/final_report_part_2/AFTS_Final_Report_Part_2_Vol_2_Consolidated.pdf (accessed 6 November 2015).

53 Australia's future tax system review, *Report to the Treasurer*, December 2009, p. 442, http://taxreview.treasury.gov.au/content/downloads/final_report_part_2/AFTS_Final_Report_Part_2_Vol_2_Consolidated.pdf (accessed 6 November 2015).

54 Australia's future tax system review, *Report to the Treasurer*, December 2009, p. 431, http://taxreview.treasury.gov.au/content/downloads/final_report_part_2/AFTS_Final_Report_Part_2_Vol_2_Consolidated.pdf (accessed 6 November 2015).

55 Committee of Inquiry into the Winegrape and Wine Industry, *Winegrape and wine industry in Australia*, June 1995, pp 21–2, http://www.pc.gov.au/research/completed/wine-grape/winegrap.pdf (accessed 9 November 2015).

56 Parliament of Western Australia Education and Health Standing Committee, *Alcohol: Reducing the Harm and Curbing the Culture of Excess* (report no. 10, 38th Parliament), 2011, p. 188.

2.28 Rather than recommending a volumetric tax, other reviews cited by FARE recommend further consideration of the basis for wine taxation. For example, the Australian National Preventative Health Agency's 2012 report found that 'the current operation of the Wine Equalisation Tax is of concern and requires reappraisal.'[57] Likewise, the 2003 House of Representatives Standing Committee report recommended the Commonwealth 'investigate the social benefits' of calculating tax based on alcohol content.[58]

2.29 In responding to the Henry review and the National Preventative Health Taskforce's report of the same year,[59] the Government stated it would not 'change alcohol tax in the middle of a wine glut and where there is an industry restructure underway'.[60] The industry restructure referred to is the *Wine Restructuring Action Agenda* launched by national industry organisations in 2009, and activities and future priorities released in December 2010.[61]

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57 Australian National Preventative Health Agency, *Exploring the Public Interest Case for a Minimum (Floor) Price for Alcohol*, May 2013, p. 74. http://health.gov.au/internet/anpha/publishing.nsf/Content/minimum-price-final-report (accessed 9 November 2015). See also Parliament of Victoria Drugs and Crime Prevention Committee, Inquiry into strategies to reduce harmful alcohol consumption (Final report, vol. 1), p. xxix http://www.parliament.vic.gov.au/images/stories/committees/dcpc/alcoholharmreduction/DCPC-Report_Alcohol_Vol1_2006-03.pdf (accessed 9 November 2015).

58 House of Representatives Standing Committee on Family and Community Affairs, *Road to recovery: Report on the inquiry into substance abuse in Australian communities,* August 2003, p. 117, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_representatives_Committees?url=fca/subabuse/report.htm (accessed 9 November 2015). See also National Preventative Health Taskforce, 'Alcohol: reshaping the drinking culture in Australia' (Chapter 4), *Australia: the healthiest country by 2020: National Preventative Health Strategy – the roadmap for action*, 2009. http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/nphs-roadmap (accessed 10 November 2015).

59 National Preventative Health Taskforce, 'Alcohol: reshaping the drinking culture in Australia' (Chapter 4), *Australia: the healthiest country by 2020: National Preventative Health Strategy – the roadmap for action*, 2009. http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/nphs-roadmap (accessed 10 November 2015).

60 The Hon. Wayne Swan, MP, Deputy Prime Minister and Treasurer and the Hon. Kevin Rudd, MP, Prime Minister, 'Stronger, fairer, simpler: a tax plan for our future', Media Release 028, 2 May 2010, http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/028.htm&pageID=003&min=wms&Year (accessed 9 November 2015); Department of Health and Ageing, *Taking Preventative Action - the Government's response to the report of the National Preventative Health Taskforce*, 11 May 2010, p. 97, http://www.health.gov.au/internet/preventativehealth/publishing.nsf/Content/taking-preventative-action (accessed 9 November 2015).

61 Wine and Grape Growers Australia, *Wine industry must continue to focus on transition*, December 2010, http://wgga.com.au/archives/642 (accessed 12 November 2015).

2.30 The committee heard qualified support for a volumetric tax on wine from some submitters.[62] However, more submitters were opposed to a volumetric tax, arguing it would be detrimental to producers or to the industry at large. Murray Valley Winegrowers submitted that local growers are 'fearful of taxation changes that could place them in an even more precarious financial position,' specifically referring to the recommendations of the Australia's Future Tax System review.[63] Treasury Wine Estates submitted that 'a single volumetric tax for all forms of alcohol is not appropriate because of the unique structure of the wine industry.'[64] Accolade Wines submitted that:

> A change to a volumetric tax would penalise and directly inhibit the sustainability of our $2 billion export industry that directly and indirectly employs up to 60,000 people, mainly in regional Australia.[65]

2.31 Arguing to the contrary, FARE submitted that 'claims about job losses within the wine industry as a result of changes to a volumetric tax are greatly exaggerated.'[66]

2.32 A number of submitters and witnesses were opposed to a volumetric tax on wine on the grounds that its likely impact was uncertain.[67] WFA argued that 'modelling on the impact on the industry has not been done.'[68] The committee notes that WFA expressed a proactive approach to addressing health policy concerns, including a commitment to 'continue critical analysis into the link between price and at-risk consumption and incorporate the findings into its advocacy on alcohol tax issues.'[69]

Criticism of the WET rebate

2.33 In this section, the committee critically evaluates the WET rebate, considering evidence that the rebate:

- inhibits much-needed wine industry restructure;

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62 Mr Jeremy Dineen, Chief Winemaker and General Manager, Josef Chromy Wines, *Committee Hansard*, 25 September 2015, p. 16; Mr Redmond Sweeny, President, Wines of Western Australia, *Committee Hansard*, 27 October 2015, p. 12; Pernod Ricard Winemakers, *Submission 28*, p. 3; Mr Nick Power, Chief Executive Officer, Margaret River Wine Association, *Committee Hansard*, 27 October 2015, p. 29.

63 Murray Valley Winegrowers Inc, *Submission 6*, pp 7–8.

64 Treasury Wine Estates, *Submission 35*, p. 7.

65 Accolade Wines, *Submission 26*, p. 9.

66 FARE, *Submission 22*, p. 14.

67 For example, Accolade Wines, *Submission 26*, pp 9–11; Wine Grape Council South Australia, *Submission 37*, p. 6; Riverland Wine, *Submission 15*, p. 17.

68 Mr Paul Evans, Chief Executive Officer, WFA, *Committee Hansard*, 27 October 2015, p. 22. See also WFA, *Submission 41*, Appendix A, p. 41.

69 WFA, *Submission 41*, p. 13; Mr Paul Evans, Chief Executive Officer, WFA, *Committee Hansard*, 27 October 2015, p. 21.

- is subject to unlawful claims or rorting;
- subsidises bulk wine and erodes the value of premium Australian wine;
- is increasingly paid to major wine retailers;
- discourages mergers in the industry; and
- supports international producers at the expense of local producers.

Distorting the market

2.34 Some witnesses argued that the WET rebate is holding the wine industry back. Treasury Wine Estates told the committee that:

> There is an agreement—I think reasonably broad agreement—around sections of the industry that the status quo on things like the rebate is simply not sustainable moving forward and not in the industry's best interests.[70]

2.35 Their submission was that '[c]urrent wine tax arrangements actively distort the market, preventing necessary restructuring and sustaining structural oversupply.'[71]

2.36 Similarly, Pernod Ricard Winemakers told the committee that:

> The current WET rebate is another major factor inhibiting industry restructure, as it subsidises producers who would otherwise not be able to compete in a free market, artificially alters business models to maximise qualification of the rebate, and restricts consolidation of the industry.[72]

2.37 Further, the South Australian Wine Industry Association expressed concern that the rebate has 'unintended consequences' and its application was 'likely to be driving outcomes which are not providing the necessary support for the industry.'[73]

2.38 Treasury Wine Estates recommended 'major reform, or removal of the current WET Rebate, and a move to a category based volumetric model of taxation,' which is discussed further below.[74]

2.39 Even from those who support retaining the rebate, the committee heard that the rebate as currently structured is distorting the market and having a negative effect

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70 Mr Roger Sharp, Director, Group Corporate Affairs, Treasury Wine Estates, *Committee Hansard*, 27 October 2015, pp 39–40.

71 Treasury Wine Estates, *Submission 35*, p. 6.

72 Pernod Ricard Winemakers, *Submission 28*, p. 3.

73 South Australian Wine Industry Association, *Submission 32*, pp 4–5.

74 Treasury Wine Estates, *Submission 35*, p. 1.

on the price of Australian wine, including overseas.[75] For example, the Riverina Wine Grape Marketing Board expressed a view that 'the WET rebate is subsidising cheap wine in the market' and that 'once we get that subsidy out of the way, wine should return to its correct value.'[76]

2.40 The committee heard from a number of submitters and witnesses that WET rebates are critical to the profitability of many businesses.[77] For example, Wines of Western Australia noted that in response to a 2011 survey, ninety five per cent of their members 'responded that the WET rebate was critical to the profitability of their business and sustainability.'[78] Clare Region Winegrape Growers Association and Clare Valley Winemakers told the committee that without the income from the WET rebate, 'the smaller organisations… would suffer the most.'[79] Similarly, Wine Tasmania said that the total removal of the rebate would have a significant impact on individual Tasmanian producers many of whom are 'under the threshold' of the maximum rebate payable. Chief Executive Officer Sheralee Davies explained that:

> …should the rebate be removed in full our small wine businesses would go from effectively paying no net tax to paying 29 per cent on the high value

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75 Ms Anita Poddar, Head of Corporate Affairs, Accolade Wines, *Committee Hansard,* 24 September 2015, p. 16; Mr Nick Waterman, Managing Director, Yalumba Wine Company, *Committee Hansard,* 24 September 2015, p. 20; Mr Marc Allgrove, Partner, Evans & Ayers Wine Business Consulting, *Committee Hansard,* 24 September 2015, p. 20; Mr Brian Simpson, Chief Executive Officer, Riverina Wine Grape Marketing Board, *Committee Hansard,* 24 September 2015, p. 49; Professor Geoffrey Lewis, Committee Member, Clare Region Winegrape Growers Association, *Committee Hansard,* 24 September 2015, p. 62; Mr Roger Sharp, Director, Group Corporate Affairs, Treasury Wine Estates, *Committee Hansard,* 27 October 2015, p. 40; Mr John Griffiths, President, Swan Valley & Regional Winemakers Association, *Committee Hansard,* 27 October 2015, p. 46; Riverland Wine, *Submission 15,* p. 5; Mr John Ward, *Submission 38,* p. 1.

76 Mr Brian Simpson, Chief Executive Officer, Riverina Wine Grape Marketing Board, *Committee Hansard,* 24 September 2015, p. 52.

77 Department of Industry and Science, *Submission 19*, p. 11; Mr Leo Pech, *Submission 13*, p. 9; WFA, *Submission 41*, Appendix G, 11 September 2015, p. 58; Mr Michael Stone, Executive Officer, Murray Valley Winegrowers, *Committee Hansard*, 24 September 2015, p. 31; Mr John Griffiths, President, Swan Valley & Regional Winemakers Association, *Committee Hansard,* 27 October 2015, p. 46; Wine Tasmania. *Submission 11*, pp 12–13; Accolade Wines, *Submission 26*, pp 3, 11–12 and 15, Mr Ken Helm AM, *Submission 25*, p. 1; Mr Redmond Sweeny, President, Wines of Western Australia, *Committee Hansard*, 27 October 2015, p. 11; Ms Sheralee Davies, Chief Executive Officer, Wine Industry Tasmania Ltd, *Committee Hansard*, 25 September 2015, p. 22.

78 Mr Redmond Sweeny, President, Wines of Western Australia, *Committee Hansard*, 27 October 2015, p. 11.

79 Professor Geoffrey Lewis, Committee Member, Clare Region Winegrape Growers Association, *Committee Hansard*, 24 September 2015, p. 64.

> of our wine. We know Tasmanian wine is amongst the highest value in the country so the impact would be severe.[80]

2.41 Arguing to the contrary, FARE described the WET rebate as 'a form of corporate welfare that supports otherwise unprofitable business to continue operating.'[81]

'Rorting'

2.42 A large number of submitters and witnesses stated that the WET rebate is subject to deliberate unlawful claims or 'rorting', which is increasing the cost of the rebate without tangible benefits to its intended recipients.[82] While evidence received of rorting or 'double-dipping' is largely anecdotal, the committee heard that the rebate is routinely paid to claimants who are not themselves growers or producers, to the value of up to $61 million.[83] That Australian National Audit Office has stated:

> A number of schemes have arisen in recent years where grape growers are attempting to improperly access the producer rebate, while some wholesalers and retailers have also been inventive in minimising the amount of wine tax paid. Some of these schemes are within the provision of current legislation but have the potential to erode revenue, contrary to the original intent of the tax.[84]

2.43 Key examples of 'contrived arrangements' are outlined in the Taxpayer Alert series produced by the Australian Tax Office (ATO).[85] In particular, the ATO

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80 Ms Sheralee Davies, Chief Executive Officer, Wine Industry Tasmania Ltd, *Committee Hansard*, 25 September 2015, p. 22.

81 FARE, *Submission 22*, p. 11.

82 Mr Roger Sharp, Director, Group Corporate Affairs, Treasury Wine Estates, *Committee Hansard*, 27 October 2015, p. 35; FARE, *Submission 22*, pp 11, 17; Treasury Wine Estates, *Submission 35*, p. 13; Mr John Ward, *Submission 38*, p. 1; WFA, *Submission 41*, p. 40; Ms Virginia Tropeano, *Submission 9*, p. 4; Wines of Western Australia, *Submission 21*, p. 5; WineFoodTechMedia Group, *Submission 34*, Attachment 2; Mr Warren Randall, Proprietor and Managing Director, Seppeltsfield Wine, Barossa Valley, South Australia, *Committee Hansard*, 24 September 2015, p. 16; Mr Brian Simpson, Chief Executive Officer, Riverina Wine Grape Marketing Board, *Committee Hansard*, 24 September 2015, p. 53; Professor Geoffrey Lewis, Committee Member, Clare Region Winegrape Growers Association, *Committee Hansard*, 24 September 2015, p. 66; Mr Stuart Bryce, *Committee Hansard*, 25 September 2015, pp 8– 9; Ms Francine Austin, *Committee Hansard*, 25 September 2015, p. 12; Mr Graeme Lynch, Chair, Wine Industry Tasmania Ltd, *Committee Hansard*, 25 September 2015, p. 25.

83 WFA, *Submission 41*, Appendix A, p. 42.

84 Australian National Audit Office, *Administration of the Wine Equalisation Tax,* Audit Report No. 20 2010, 14 December 2010, p. 13.

85 Australian Taxation Office, *Taxpayer Alert TA 2013/2: Wine equalisation tax (WET) producer rebate schemes*, 8 October 2013, https://www.ato.gov.au/law/view/document?DocID=TPA/TA20132/NAT/ATO/00001 (accessed 16 November 2015).

described situations where a wine producer who has already claimed the maximum $500 000 establishes 'linked entities' to claim additional WET rebates. The committee understands that linked entities are used to either:

- buy additional grapes from the grower and have the producer manufacture the grapes into wine, then sell the wine back to the producer and claim a WET rebate on that sale; or
- buy bulk wine from that producer and 'blend' the wine (therefore qualifying as producers themselves), then sell the wine on to further linked entities and claim a rebate on the sales.[86]

2.44 The ATO lists a number of features of concern about these arrangements including whether the entities are in fact eligible producers under the WET Act, whether WET liability or rebate entitlement should be adjusted to reflect 'non-arm's length transactions' and whether the anti-avoidance provisions in the GST Act apply which incur penalties such as repaying up to 75 per cent of the tax avoided.[87] WFA stated that they can work with the ATO to eliminate uncommercial arrangements.[88]

2.45 To minimise rorting, Wines of Western Australia submitted in favour of removing the 'quoting system' which allows rebates to be paid to producers or linked entities that have not themselves paid WET.[89] By 'quoting' the ABN of the entity that will pay WET on the final sale, producers and entities are able to qualify for rebates on sales between them without paying WET.[90] WFA told the committee that quoting is 'a widespread practice among grape growers who produce contract-made bulk wine'. They submitted that they 'do not know how widespread the practice is… to purchase wine for blending or to supplement their own production.'[91]

2.46 Wines of Western Australia proposed that as an alternative to quoting, producer rebates should only be received for WET paid. This would require distributors to notify producers of the exact amount of sales tax paid during a given

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86 Australian Taxation Office, *Taxpayer Alert TA 2013/2: Wine equalisation tax (WET) producer rebate schemes*, 8 October 2013, https://www.ato.gov.au/law/view/document?DocID=TPA/TA20132/NAT/ATO/00001 (accessed 16 November 2015).

87 Ibid.

88 WFA, *Submission 41*, p. 41; WFA, *Submission 41*, Appendix G, p. 15.

89 Wines of Western Australia, *Submission 21*, p. 5.

90 Australian Taxation Office, *Taxpayer Alert TA 2013/2: Wine equalisation tax (WET) producer rebate schemes*, 8 October 2013, https://www.ato.gov.au/law/view/document?DocID=TPA/TA20132/NAT/ATO/00001 (accessed 16 November 2015).

91 WFA, answer to question on notice, 27 October 2015 (received 11 November 2015).

period.[92] WFA stated that they would consider a proposal to remove the quoting system if it was proven effective and workable:

> In regards to the proposal to allow the rebate to be paid only on wine where the WET (tax) 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 consider it closely.[93]

2.47 The committee notes that Treasury Wine Estates and Pernod Ricard Winemakers have argued against tying the rebate to the amount of WET paid, including because such an arrangement:

> …links the rebate only to domestic sales and ignores export performance, which is two thirds of Australian production and offers the greatest growth opportunities.[94]

2.48 The committee heard support for the audit, compliance and policing activities of the ATO in relation to the WET rebate, which led to the recovery of $47.8 million in fines and adjustments in 2013-14.'[95] This includes publishing public rulings by the Taxation Commissioner on the intended application of the rebate.[96]

Bulk wine industry

2.49 The committee heard that the producer rebate has unintended consequences in subsidising the production of bulk wines which then flood the market and lead to an overall reduction in price. Bulk wine is defined as wine sold in containers greater than 25 litres.[97] Accolade Wines argued that contrary to the intention of the WET rebate, producers of bulk and unbranded wines have a competitive advantage:

> The availability of the rebate on bulk and unbranded wine has served to drive down wine prices as producers seek margin by claiming the [WET] rebate on grapes processed and sold as bulk and unbranded wine, which then is available as retailers' own brands in competition with branded wine

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92 Wines of Western Australia, *Submission 21*, p. 5.

93 WFA, answer to question on notice, 27 October 2015 (received 11 November 2015).

94 Additional information from Treasury Wine Estates and Pernod Ricard Winemakers, *Using the Wine Equalisation Tax rebate to build a stronger and more profitable Australian wine industry: Submission to Discussion Paper*, received 30 September 2015, p. 3.

95 WFA, *Submission 41*, Appendix G, p. 15; Murray Valley Winegrowers Inc, *Submission 6*, p. 9.

96 For example, Australian Tax Office, *Wine equalisation tax: operation of the producer rebate for other than New Zealand participants*, WETR 2009/2, https://www.ato.gov.au/law/view/document?LocID=%22WTR%2FWT20092%2FNAT%2FATO%22&PiT=99991231235958 (accessed 10 November 2015).

97 WFA, *Submission 41*, Appendix D, p. 10.

> producers who have the additional costs of supporting their brands through marketing and promotion.[98]

2.50 Ms Virginia Tropeano submitted that 'if the WET rebate is found to be contributing to the low prices paid for bulk wine then it is restricting the ability of the industry to clear the wine glut and restructure.'[99]

Retailers receiving the WET rebate

2.51 While the power and influence of retailers is discussed further in Chapter 3, the committee has heard that the WET rebate provides an unfair commercial advantage to major retailers who purchase bulk wine from growers to produce their 'house brand products'.[100] Wine Grape Growers Australia submitted that:

> The ability of major retailers to capture the value of the WET Rebate is a key part of the unintended consequences of WET rebates in the current operating environment.[101]

2.52 Mr Warrick Duthy of Clare Valley Winemakers described major retailers as 'one of the greatest beneficiaries of the rebate'.[102] Riverland Wine explained that this leads to the situation where:

> …retailers and large wine buyers trade with the rebate included. Winemakers in the Riverland region often field calls from companies seeking wine, and quoting two prices; one with and one without the rebate.[103]

2.53 Wines of Western Australia stated that reform of the WET rebate 'is not the silver bullet, but what that will do is provide fairer industry dynamics' by putting a stop to 'the ratcheting down of the price points through the major retailers.[104]

Merged entities

2.54 The committee heard that the availability of the WET rebate could be discouraging mergers among small businesses, contributing to the unprofitability of

98 Accolade Wines, *Submission 26*, p. 15.

99 Ms Virginia Tropeano, *Submission 9*, p. 4.

100 Mr John Ward, *Submission 38*, p. 1.

101 WGGA, *Submission 30*, p. 18.

102 Mr Warrick Duthy, Committee Member, Clare Valley Winemakers Inc, *Committee Hansard*, 24 September 2015, p. 62.

103 Riverland Wine, *Submission 15*, p. 9.

104 Mr Redmond Sweeny, President, Wines of Western Australia, *Committee Hansard*, 27 October 2015, p. 8.

the industry.[105] To assist small to medium businesses 'who believe that their future lies in consolidation'[106] WFA submit that the Government could:

> Introduce transitional rebate measures for merged claimants, phasing out at 25% per year over four years to encourage industry consolidation by enabling merged entities to continue to claim the rebates they accessed when separate so that this loss of benefit does not impede consideration of mergers.[107]

2.55 The committee notes that WFA submitted this proposal to the Government's WET Rebate Discussion Paper on 11 September 2015.[108] PwC modelling commissioned by WFA suggested that despite the initial outlay, encouraging consolidation 'would save the Commonwealth $31 million to the end of 2018–19'.[109]

New Zealand producers

2.56 The Henry review of 2009 found that the WET rebate is not contributing effectively to regional economies, reporting that:

> The assistance provided by the WET rebate is poorly targeted. It benefits wine produced outside rural and regional Australia, including wine produced overseas… Spending targeted at rural assistance is likely to deliver significantly better value for money to the community.[110]

2.57 In particular, a number of submitters and witnesses asked Government to reconsider paying the WET rebate to New Zealand producers.[111] The extension of the rebate to New Zealand producers in 2006 was described to the committee as

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105 Australia's future tax system review, *Report to the Treasurer*, December 2009, p. 438, http://taxreview.treasury.gov.au/content/downloads/final_report_part_2/AFTS_Final_Report_Part_2_Vol_2_Consolidated.pdf (accessed 6 November 2015).

106 WFA, *Submission 41*, p. 45.

107 WFA, *Submission 41*, p. 6.

108 WFA, *Submission 41*, Appendix G.

109 WFA, *Submission 41*, Appendix F, p. 14.

110 Australia's future tax system review, *Report to the Treasurer*, December 2009, p. 438, http://taxreview.treasury.gov.au/content/downloads/final_report_part_2/AFTS_Final_Report_Part_2_Vol_2_Consolidated.pdf (accessed 6 November 2015).

111 Mr Graeme Lynch, Chair, Wine Industry Tasmania Ltd, *Committee Hansard*, 25 September 2015, p. 25; Mrs Virginia Tropeano, *Submission 9*, p. 4; Mr Redmond Sweeny, President, Wines of Western Australia, *Committee Hansard*, 27 October 2015, p. 8; FARE, *Submission 22*, p. 9; Treasury Wine Estates, *Submission 35*, p. 6; WFA, *Submission 41*, p. 47; Mr Nick Power, Chief Executive Officer, Margaret River Wine Association, *Committee Hansard*, 27 October 2015, p. 26; Mr John Griffiths, President, Swan Valley & Regional Winemakers Association, *Committee Hansard*, 27 October 2015, p. 46; Professor Geoffrey Lewis, Committee Member, Clare Region Winegrape Growers Association, *Committee Hansard*, 24 September 2015, p. 62.

'unfair',[112] 'absurd'[113] and 'laughable'.[114] Treasury Wine Estates estimated that in 2015-16, Australia paid $25 million in rebates to New Zealand producers,[115] and Seppeltsfield Wine estimated even higher at $30 to $35 million.[116]

2.58 New Zealand wine performs strongly in the Australian market. Australia imports more wine from New Zealand than from any other country, at a value of almost $335 million per year.[117] The Department of Industry and Science submitted that 'of the 15 per cent of wine imported' into Australia, New Zealand wines make up '53 per cent by value and 64 per cent by volume.'[118] Since the extension of the rebate in 2006–07, wine imported into Australia has increased by 7.1 per cent.[119]

2.59 The committee heard evidence that the WET rebate has contributed to the growth of the New Zealand wine industry at the expense of local industry. They cite as an example 'New Zealand Sauvignon Blanc, which in 2013 accounted for one in every ten bottles of wine sold in Australia'.[120] Clare Winegrape Growers Association and Clare Valley Winemakers suggested that New Zealand producers are selling bulk wine to supermarkets:

> There is a reasonable amount of evidence to suggest that our Kiwi cousins have benefited from the rebate, particularly in sales of bulk wine and other branded wine that has ended up really being sold directly to supermarkets, which has made it incredibly difficult to compete from a small winery perspective.[121]

2.60 WFA suggested there is 'potential in the future for other countries to also argue for equal treatment' which would require further outlay from Australia on WET rebates paid overseas.[122] After New Zealand, the top countries of origin for wine

112 Mr Nick Power, Chief Executive Officer, Margaret River Wine Association, *Committee Hansard*, 27 October 2015, p. 26.

113 Mr Redmond Sweeny, President, Wines of Western Australia, *Committee Hansard*, 27 October 2015, p. 8.

114 Mrs Virginia Tropeano, *Submission 9*, p. 4.

115 Treasury Wine Estates, *Submission 35*, p. 6.

116 Mr Warren Randall, Proprietor and Managing Director, Seppeltsfield Wine, *Committee Hansard*, 24 September 2015, p. 16.

117 Accolade Wines, *Submission 26*, p. 6.

118 Department of Industry and Science, *Submission 19*, p. 10.

119 Department of Agriculture, *Submission 29*, p. 4.

120 Clare Region Winegrape Growers Association and Clare Valley Winemakers Inc, *Submission 6*, p. 2.

121 Mr Warrick Duthy, Committee Member, Clare Valley Winemakers Inc, *Committee Hansard*, 24 September 2015, p. 61.

122 Mr Paul Evans, Chief Executive Officer, WFA, *Committee Hansard*, 27 October 2015, p. 20.

imports into Australia are France, Italy, Spain and Chile.[123] Their recommendation, supported by a number of witnesses and submitters, was to:

> Abolish the separate NZ scheme because it affords NZ producers a commercial advantage over Australian and other foreign country claimants...[124]

2.61 In considering this recommendation, the committee is mindful of Australia's international obligations. At the time the rebate was extended to New Zealand producers, the Minister for Revenue and Assistant Treasurer the Hon. Mal Brough MP stated the 'measure demonstrates the close economic relationship shared by Australia and New Zealand.'[125] Under the *Australia and New Zealand Closer Economic Relations Trade Agreement of 1983* (CER), neither country may impose levies, taxes and charges to imported goods from the other country above those applying to domestic goods.[126]

2.62 Removing the rebate from New Zealand producers could be considered contrary to the objectives of the CER, including to:

> … eliminate barriers to trade between Australia and New Zealand in a gradual and progressive manner … [and] to develop trade between New Zealand and Australia under the conditions of fair competition.[127]

2.63 It could also give rise to international backlash, particularly from New Zealand and also from other WTO countries to whom Australia could be considered to have obligations under the *General Agreement on Tariffs and Trade 1994* (GATT).[128] Measures available to New Zealand to enforce Australia's obligations under the CER are consultative in nature.[129] Nevertheless, the committee is mindful that:

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123 Department of Agriculture, *Submission 29*, p. 6.

124 WFA, *Submission 41*, p. 6.

125 The Hon. Mal Brough MP, Minister for Revenue and Assistant Treasurer, Tax Laws Amendment (2005 Measures No. 4) Bill 2005 (second reading speech), *House of Representatives Hansard*, 23 June 2005, p. 17.

126 Department of Foreign Affairs, *Australia & New Zealand Closer Economic Relations Trade Agreement, and Exchange of Letters* (ATS 1983 No. 2), entry into force 1 January 1983, Article 7.2, http://dfat.gov.au/trade/agreements/anzcerta/Documents/anzcerta1.pdf (accessed 12 November 2015); WFA, *Submission 41*, Appendix E2, p. 7.

127 Department of Foreign Affairs, *Australia & New Zealand Closer Economic Relations Trade Agreement, and Exchange of Letters* (ATS 1983 No. 2), entry into force 1 January 1983, Article 1(c) and (d).

128 Signed at Marrakech, Morocco, 15 April 1994 and entered into effect on 1 January 1995.

129 Parliamentary Library, Bills Digest No. 9 2004–05, Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004, 28 July 2004, p. 8.

> If New Zealand decided to take action, the consultations under the CER or the dispute resolution under the GATT may become an expensive and embarrassing exercise for Australia.[130]

Reforming the WET rebate

2.64 A large number of submitters stated that the WET rebate had strayed from its original policy intent which was to support smaller and rural and regional producers, and should be reformed.[131] Informed by the criticisms identified above, the committee in this section considers proposals to place a cap on the maximum WET rebate payable or to tighten eligibility requirements, as well as removing the rebate altogether.

Capping the rebate

2.65 The committee heard that reducing the maximum amount payable to producers as WET rebates could have the dual impact of preventing rorting, reducing the cost of the rebate and supporting smaller producers. Treasury Wine Estates and Pernod Ricard Winemakers explained that the majority of producers claim less than $100 000 per year and would arguably be equally supported by a lesser maximum rebate of $150 000.[132] Indeed, the committee heard that in 2011–2012, only 501 producers of the total 1 912 claimed more than $100 000, receiving over 20 per cent of rebate paid.[133] Treasury Wine Estates and Pernod Ricard Winemakers explained that without affecting the bulk of the industry, it would:

> …immediately impact those businesses which have structured themselves to maximise their rebate entitlement and whose production may be actively

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130 Parliamentary Library, Bills Digest No. 9 2004–05, Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004, 28 July 2004, p. 13.

131 Mr Tony D'Aloisio AM, President, WFA, *Committee Hansard*, 27 October 2015, p. 14; Mr Roger Sharp, Director, Group Corporate Affairs, Treasury Wine Estates, *Committee Hansard*, 27 October 2015, p. 38; Ms Anita Poddar, Head of Corporate Affairs, Accolade Wines, *Committee Hansard*, 24 September 2015, p. 11; Professor Geoffrey Lewis, Committee Member, Clare Region Winegrape Growers Association, *Committee Hansard*, 24 September 2015, p. 62; Mr Jeremy Dineen, Chief Winemaker and General Manager, Josef Chromy Wines, *Committee Hansard*, 25 September 2015, p. 16; Mrs Virginia Tropeano, *Submission 9*, p. 4l; Wine Tasmania, *Submission 11*, pp 4, 13; Riverland Wine, *Submission 15*, p. 10; FARE, *Submission 22*, pp 5, 9, 11, 20–23; Accolade Wines, *Submission 26*, pp 3, 15;

132 Additional information from Treasury Wine Estates and Pernod Ricard Winemakers, *Using the Wine Equalisation Tax rebate to build a stronger and more profitable Australian wine industry: Submission to Discussion Paper*, received 30 September 2015, p. 3.

133 WFA, *Submission 41*, Appendix A, p. 86. No further facts on the change in the number of producers are available since the discontinuation of the ABS 1329.0 publication.

> contributing to both surplus production and diminished profitability within the commercial wine segment.[134]

2.66 The WET Rebate Discussion Paper called for submissions on what a maximum new rebate could be if the cap was reduced. Suggesting that 'behavioural changes' may flow from a reduced cap, the paper acknowledges that a reduction would not entirely address the problem of 'double-dipping' or rorting, as it:

> …would not address the incentive that currently exists for large producers to structure their winemaking businesses into multiple entities. For example, for a producer who is currently claiming $300 000 per year, there would be an incentive to split its business across two entities to maintain its $300 000 yearly entitlement.[135]

2.67 The paper also considered whether the rebate could be provided as a proportion of WET paid, for example at 60 per cent, capped at a set maximum. This would reduce the amount paid to all producers who receive less than the maximum. The paper noted, however, that for a proportionate reduction of this kind 'the impact would primarily be borne by smaller producers.'[136]

Tightening eligibility for the rebate

2.68 Professor Geoffrey Lewis of the Clare Region Winegrape Growers Association told the committee that the WET rebate:

> …was not to support bulk wine production or to support New Zealand production; it was there to support rural communities and the wine industry through tourism and cellar doors and to maintain the health of the industry.[137]

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134 Additional information from Treasury Wine Estates and Pernod Ricard Winemakers, *Using the Wine Equalisation Tax rebate to build a stronger and more profitable Australian wine industry: Submission to Discussion Paper*, received 30 September 2015, p. 3.

135 Australian Government The Treasury, *Wine equalisation tax rebate: Discussion paper*, August 2015, p. 27.

136 Ibid.

137 Professor Geoffrey Lewis, Committee Member, Clare Region Winegrape Growers Association, *Committee Hansard*, 24 September 2015, p. 62.

2.69 To level the playing field, a large number of submitters and witnesses[138] supported a recommendation by WFA to:

> Remove eligibility for the WET rebate from bulk, unpackaged, unbranded [wine] and wine for the private label of retailers and from wine that is not a finished product fit for retail sale….[139]

2.70 The committee heard that changing eligibility for bulk and unbranded wine could lessen the impact of 'virtual wineries'[140] and 'traders'[141], including 'those that have arranged to access multiple rebates'. It would so by limiting their access to 'what is, in effect, subsidised fruit.'[142]

2.71 To more closely align the WET rebate to this original purpose, WFA recommended tighter conditions on eligibility.[143] WFA President Mr Tony D'Aloisio AM stated that '[c]laimants should have regional investments such as business premises, local liquor licences and they should employ people.'[144] Mr Jeremy Dineen of Josef Chromy Wines similarly argued that:

> …the rebate itself should be tied to capital invested in the wine industry, and specifically to capital invested in production assets—so vineyards

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138 Mr Chris Byrne, Executive Officer, Riverland Wine, *Committee Hansard*, 24 September 2015, p. 44; Mr Warrick Duthy, Committee Member, Clare Valley Winemakers Inc, *Committee Hansard*, 24 September 2015, p. 61; Professor Geoffrey Lewis, Committee Member, Clare Region Winegrape Growers Association, *Committee Hansard*, 24 September 2015, p. 66; Mr Stuart Bryce, *Committee Hansard*, 25 September 2015, p. 12; Mr Graeme Lynch, Chair, Wine Industry Tasmania Ltd, *Committee Hansard*, 25 September 2015, pp 21 and 25; Mr Redmond Sweeny, President, Wines of Western Australia, *Committee Hansard*, 27 October 2015, p. 3; Mr Nick Power, Chief Executive Officer, Margaret River Wine Association, *Committee Hansard*, 27 October 2015, p. 25; Mr Roger Sharp, Director, Group Corporate Affairs, Treasury Wine Estates, *Committee Hansard*, 27 October 2015, p. 35; Mr John Griffiths, President, Swan Valley & Regional Winemakers Association, *Committee Hansard*, 27 October 2015, p 47; Ms Anita Poddar, Head of Corporate Affairs, Accolade Wines, *Committee Hansard*, 24 September 2015, p. 11; Mr Warren Randall, Proprietor and Managing Director, Seppeltsfield Wine, *Committee Hansard*, 24 September 2015, p. 11; South Australian Wine Industry Association Incorporated, *Submission 32*, p. 6; Mr Chris Byrne, Executive Officer, Riverland Wine, *Committee Hansard*, 24 September 2015, p. 45; Mr John Griffiths, President, Swan Valley & Regional Winemakers Association, *Committee Hansard*, 27 October 2015, p. 46.

139 WFA, *Submission 41*, Appendix D, p. 10.

140 WGGA, *Submission 30*, p. 17; Mr Tony D'Aloisio AM, President, WFA, *Committee Hansard*, 27 October 2015, p. 14; FARE, *Submission 22*, p. 18.

141 Mr Warren Randall, Proprietor and Managing Director, Seppeltsfield Wine, *Committee Hansard*, 24 September 2015, p. 11.

142 Mr Tony D'Aloisio AM, President, WFA, *Committee Hansard*, 27 October 2015, p. 14.

143 WFA, Submission 41, p. 31.

144 Mr Tony D'Aloisio AM, President, WFA, *Committee Hansard*, 27 October 2015, p. 14.

> and/or wineries. I think that then removes a large percentage of the rorting that can happen.[145]

2.72 The committee heard from WFA that based on their proposal, 'reforms on the WET rebate offer the government in excess of $200 million in savings over the forward estimates.'[146]

Removing the rebate

2.73 As well as changing the WET rebate in the short term, the committee heard support for the rebate to be phased out altogether in the longer term. For example, Treasury Wine Estates submitted 'that reforms could go further including eventual outright abolition of the WET Rebate.'[147] Their submission to the Treasury Re:think discussion paper in June 2015 included a recommendation to 'abolish the WET rebate over the longer term, and as an immediate step, implement the package of reforms to the WET Rebate proposed by the WFA.'[148]

2.74 Removing the WET rebate was also supported by Pernod Ricard Winemakers, who submitted that they have several times:

> …called for the abolition of the WET rebate. This remains our preference, as it is simpler and does not encourage wine businesses to artificially manipulate their business model to maximise their rebate. Government support for regional development and cellar door wine tourism can be provided directly to intended recipients, avoiding the present situation which sees foreign winemakers qualifying for rebates.[149]

2.75 For peak body Wine Grape Growers Australia, it was a 'democratic matter' to support broad reform of the WET rebate, because the majority of represented growers do not produce wine and are therefore not eligible for the rebate. Instead, those growers are disadvantaged by the effect that the rebate has on the price of their product:

> Ninety-two per cent of our constituency will never have the hope of being able to gear up to convert their grapes to wine—the grapes they cannot sell to wine companies—in order to get the WET rebate. So, given the degree to which the WET rebate is driving down benchmark prices, because people are trading off the sales price for the WET rebate they receive, clearly they are losers.[150]

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145 Mr Jeremy Dineen, Chief Winemaker and General Manager, Josef Chromy Wines, *Committee Hansard,* 25 September 2015, p. 16.

146 Mr Tony D'Aloisio AM, President, WFA, *Committee Hansard,* 27 October 2015, p. 14.

147 Treasury Wine Estates, *Submission 35,* p. 6.

148 Treasury Wine Estates, *Submission 35,* Attachment 1, p. 5.

149 Pernod Ricard Winemakers, *Submission 28,* p. 3.

150 Mr Lawrence Stanford, Executive Director, WGGA, *Committee Hansard,* 24 September 2015, p. 38.

2.76 Treasury Wine Estates and Pernod Ricard Winemakers stated that instead of the WET rebate, in future 'a direct grant may also provide a way of better targeting intended recipients.'[151]

Impact of reform

2.77 The committee consistently heard that any savings from WET rebate reform should be reinvested in local industry to offset the financial impact on small businesses, including growers. Treasury Wine Estates recommended that:

> …savings delivered through major reforms to the WET Rebate could be delivered to help fund such transitional support. Additionally, consideration should be given by Government to incremental reductions in the WET Rebate in order to facilitate a smooth transition.[152]

2.78 The committee heard that those who would need support include an estimated '300 independent growers who have redesigned their businesses based on the WET rebate', comprising only eight per cent of growers overall but half of those who are considered independent growers.[153] Wine Grape Growers Australia appealed 'for those grower businesses to be incorporated into a transition process so that they are not burnt in the process.'[154]

2.79 The committee heard a variety of proposals for transitional measures to support those affected by WET rebate reform. Treasury Wine Estates suggested that grants for re-training and 'exit schemes' work well if designed correctly to help 'participants exit the industry with dignity.'[155] Mr Nick Waterman from Yalumba Wine Company expressed support for measures to 'assist regional growers to redeploy the use of their land where it is not profitable for them to continue to grow grapes.'[156] WFA told the committee that they would encourage grape growers to 'redirect their bulk to the export markets'.[157]

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151 Additional information from Treasury Wine Estates and Pernod Ricard Winemakers, *Using the Wine Equalisation Tax rebate to build a stronger and more profitable Australian wine industry: Submission to Discussion Paper*, received 30 September 2015, p. 3.

152 Treasury Wine Estates, *Submission 7*, p. 7.

153 Mr Lawrence Stanford, Executive Director, WGGA, *Committee Hansard,* 24 September 2015, p. 38.

154 Mr Lawrence Stanford, Executive Director, WGGA, *Committee Hansard,* 24 September 2015, p. 38.

155 Mr Roger Sharp, Director, Group Corporate Affairs, Treasury Wine Estates, *Committee Hansard*, 27 October 2015, p. 35. See also Mr John Griffiths, President, Swan Valley & Regional Winemakers Association, *Committee Hansard,* 27 October 2015, p. 49.

156 Mr Nick Waterman, Managing Director, Yalumba Wine Company, *Committee Hansard,* 24 September 2015, p. 25.

157 Mr Tony D'Aloisio AM, President, WFA, *Committee Hansard,* 27 October 2015, p. 15.

2.80 The WFA proposal to reinvest WET rebate savings into marketing Australian wine is discussed further in Chapter 4.

Committee view

2.81 The committee has heard persuasive evidence that the WET rebate is working against the profitability of the Australian wine industry, and agrees with industry representative bodies that urgent reform is required. The bulk of witnesses and submitters agreed that the original policy intent of the rebate is no longer being realised as the rebate is paid to entities without ongoing capital in the Australian wine industry.

2.82 The committee has heard that the rebate's distorting effect is an ongoing threat to the sustainability of the grape and wine industry and to Australia's international position as a premium producer. Accordingly, the committee is of the view that widespread rorting and misapplication of the WET rebate are best addressed by a phased removal of the rebate in its entirety, while providing targeted industry assistance to those genuine recipients whose commercial viability depends on the rebate.

2.83 Considerable savings would result from phased removal of the rebate, and the committee highlights the importance of sensitive redeployment of that funding to assist growers and producers in adjusting their business models or making a transition out of the industry. At the same time, the committee urges the Government to undertake comprehensive reform of wine taxation so that the Australian industry remains competitive.

Recommendation 1

2.84 The committee recommends that the Government phase out the current Wine Equalisation Tax (WET) rebate over five years, allocating the savings to a structural adjustment assistance program for the industry including an annual grant to genuine cellar door operators to support their continued operation.