



## **Australian Government**

Australian Government response to the  
Senate Rural and Regional Affairs and Transport References  
Committee report:

Australian grape and wine industry

July 2017

## Introduction

The Australian Government welcomes the Senate Rural and Regional Affairs and Transport References Committee's report on the Australian grape and wine industry. The Australian Government thanks the Committee members for their work in delivering the report.

### Recommendation 1

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.

#### **The Australian Government notes this recommendation.**

The Government is taking a better targeted approach to support genuine wine producers with an investment in the industry, Australian wine regions and brands.

On 3 May 2016, the Government announced reforms to the WET Rebate as part of Budget 2016-17. The reforms are intended to address integrity concerns and align the rebate with its original policy intent of providing support to small wine producers in rural and regional Australia.

In line with the recommendations of the industry-based Wine Equalisation Tax (WET) Rebate Consultative Group, the Government will retain the WET Rebate in the tax system as it provides an efficient mechanism for wine producers to offset their WET liability.

The Government will strengthen the WET rebate integrity rules by amending the associated producer provisions in the *A New Tax System (Wine Equalisation Tax) Act 1999* to help deter artificial structuring to claim multiple rebate claims.

On 2 December 2016, the Government announced detail of the reforms, decided after extensive industry consultation.

The WET rebate cap will be reduced from \$500,000 to \$350,000 on 1 July 2018. Rebate claims must also be better linked to the WET being paid.

From 1 July 2018, eligibility criteria will change so that the rebate will only apply:

- When producers own 85% of the grapes at the crusher used to make the wine, and maintain ownership throughout the wine making process; and
- To packaged wine, in a container not exceeding 5L and branded with a registered trademark for domestic retail sale.

In 2018-19, the government will introduce a grant programme to allow producers who have exhausted their WET rebate cap to claim a top-up payment. This programme will be capped at \$10 million per year, and will provide eligible producers with up to \$100,000 per year. The government will continue to consult with industry to settle the details of the grant programme.

The changes will reduce the incentive for rorting and strengthen the long-term prospects of Australian wine producers and ensure ongoing investment in the wine industry, and particularly rural and regional Australia.

## Recommendation 2

The committee recommends that the Government amend labelling requirements so that wine labels must declare whether wine is produced by an entity owned or controlled by a major retailer.

### **The Australian Government notes this recommendation.**

In general, the Australian Government does not require mandatory food labelling for matters of consumer preference, and believes food businesses are best placed to respond to demand for such products. Requiring suppliers to declare whether wine is produced by an entity owned or controlled by a major retailer would impose additional compliance costs on businesses, potentially increasing costs to consumers.

The Australian Consumer Law prohibits misleading or deceptive conduct and false or misleading representations, including claims that food products (such as wine) are of a certain nature. These protections are relevant to claims made by businesses about their products, including where and how they have been produced.

The Australian Consumer Law is enforced by the Australian Competition and Consumer Commission (ACCC) and state and territory fair trading agencies. A range of penalties apply for breaches of these requirements, including fines of up to \$1.1 million, injunctions and damages. The ACCC has previously taken action under these provisions in relation to the misleading labelling of beer. Where industry participants have concerns with specific labelling practices in relation to wine, these may be referred to the ACCC for investigation.

The Government notes that the wine industry—through the Winemakers' Federation of Australia—could develop a single consumer sentence or logo in support of rural and regional wine producers, which could be used on wine labels.

## Recommendation 3

The committee recommends that in responding to the Competition Policy Review's Final Report, the Government specifically consider commercial agreements between growers and producers of wine and the major retailers.

**The Australian Government notes this recommendation**, having provided its response to the Competition Policy Review Final Report (Final Report) in November 2015.

In responding to the Final Report, the Government supported competition policy measures relevant to the wine industry. This included improving collective bargaining notifications, which may help address power imbalances between wine grape growers, wine producers and major retailers.

The Government also supported changes to the misuse of market power law (Section 46 of the *Competition and Consumer Act 2010*) which would prohibit firms with substantial market power from engaging in conduct that has the purpose, effect or likely effect of substantially lessening competition in that or any other market. The amended provision will protect the competitive process and ensure firms with substantial market power compete on their merits.

#### **Recommendation 4**

The committee recommends Australia Post review its approach to wine delivery in each Australian state and territory with a view to developing harmonised agreements across Australia.

#### **The Australian Government notes this recommendation.**

Under the *Australian Postal Corporation Act 1989*, Australia Post is responsible for the day-to-day running of the organisation. As a Government Business Enterprise, Australia Post is, as far as practicable, required to perform its functions in a manner consistent with sound commercial practice.

Australia Post has negotiated delivery agreements with 1042 individual wine customers across Australia, including the Wine Industry Association of Western Australia Inc, Yarra Valley Wine Growers' Association Inc, Mornington Peninsula Vignerons' Association Inc, and Wine Industry Tasmania Ltd.

Australia Post takes a commercial approach when developing and negotiating all parcels agreements, including for wine delivery. The terms offered for each agreement will vary according to factors including the volume of parcels to which the customer is committing, the collection and delivery points, and any additional services required (for example, Signature on Delivery or Identification on Delivery).

Through these agreements, wine industry associations are also able to negotiate better per unit shipping rates by consolidating parcels volumes. The benefits of these agreements can be passed on to association members.

The Government notes that domestic and international wine delivery services are open to competition, with wine producers and wine industry associations having a choice of freight providers.

#### **Recommendation 5**

The committee recommends that the Commonwealth Government, through the Council of Australian Governments (COAG), work with states and territories to establish mutual recognition arrangements for responsible service of alcohol qualifications.

#### **The Australian Government agrees-in-principle with this recommendation.**

In September 2015, the Productivity Commission published a research report on mutual recognition schemes which included a recommendation that governments in Australia and New Zealand should make a joint statement that they view co-regulated occupations as covered by mutual recognition.

The Cross Jurisdictional Review Forum comprising senior officers from the Commonwealth, state and territory and the New Zealand governments, is responding to the Commission's recommendations.

It has established a working group to examine the legal position for inclusion of co-regulated occupations under mutual recognition arrangements, the extent to which these might be already included, and what operational issues might arise as a consequence of inclusion. The responsible service of alcohol qualification will be considered in the scope of this work.

### **Recommendation 6**

The committee recommends that Government continue to match the grape research levy and wine grapes levy income collected by the Australian Grape and Wine Authority.

#### **The Australian Government agrees with this recommendation.**

The Government is committed to providing matching payments to the Australian Grape and Wine Authority on eligible research, development and extension (RD&E) expenditure, up to 0.5 per cent of gross value of production of the wine industry.

### **Recommendations 7 and 8**

The committee recommends that Government give further consideration to the roles of the Australian Grape and Wine Authority and the Australian Bureau of Statistics in wine industry data collection.

The committee recommends that funding be allocated so that the production of the Vineyards Census is resumed on an annual basis.

#### **The Australian Government notes these recommendations.**

The Government considers it is a matter for industry to investigate methods for improving the accuracy and timeliness of wine industry data. The Australian Grape and Wine Authority—which is co-funded by the Australian Government—is undertaking work to develop a system to provide industry with access to such data.

The 2015 Vineyards Census was funded by the Australian Grape and Wine Authority as part of its RD&E expenditure. The funding of an annual Vineyards Census is a matter for the Authority.

The Government's proposed legislative amendments to the *Primary Industries Levies and Charges Collection Act 1991* to allow research and development corporations to establish levy payer registers may also allow for the Australian Grape and Wine Authority to request the collection of additional information.

### **Recommendations 9 and 10**

The committee recommends that Government commit to increasing export demand for Australian wine by considering whether current opportunities for industry participants to increase exports through the Australian Grape and Wine Authority and the Export Market Grants Development Scheme are fully optimised or would benefit from redesign.

The committee recommends that the government significantly increase its funding to wine export market development.

#### **The Australian Government agrees with these recommendations.**

On 3 May 2016, the Government announced that the Australian Grape and Wine Authority will be provided \$50 million over four years to boost Australian wine promotion, wine tourism and exports.

The Australian Grape and Wine Authority—in consultation with industry—will undertake a business case and develop a detailed programme design. Activities will include specific funding for wine export market development.

The Australian Grape and Wine Authority will initially be provided \$2 million in 2016-17 to prepare a business case and begin programme delivery, with the remainder to be paid over the following three financial years.

### **Recommendation 11**

The committee recommends an independent review of the Australian Wine Industry Code of Conduct, to report to Government before 30 June 2016.

#### **The Australian Government notes the recommendation.**

As a voluntary industry-owned code of conduct, it is a matter for the industry to consider and undertake a review of the Australian Wine Industry Code of Conduct.

### **Recommendation 12**

The committee recommends that if targets for increased uptake of the Australian Wine Industry Code of Conduct are not met, the Government, in consultation with representative organisations for growers and winemakers, reconsider the development of a mandatory code before the end of 2017.

**The Australian Government notes this recommendation** and the view of the Committee, which was persuaded of the value of retaining a voluntary industry-owned code of conduct.

## **Additional Comments**

### **Senator Sean Edwards and Senator the Hon Bill Heffernan**

#### **Recommendations 1, 2, 3 and 4**

We recommend that WET reform be considered outside of the Government's Tax White Paper process so as to relieve it of those time constraints and to avail Treasury of an opportunity for full and thorough exploration of the issue.

We recommend that in the interests of the WET rebate scheme's integrity, formal definitions be created to differentiate 'winemaker' and 'wine trader' and that:

- (a) wine traders be made immediately ineligible;
- (b) winemaker rebate eligibility be reduced to a maximum of \$150 000 over a period of five years with a commencement date of 1 July 2017.

We recommend concurrent with the reduction of the WET rebate applicable for wine producers, that increased funding be available to wine producers via a marketing grant for which Australian Grape and Wine Authority-approved marketing activities qualify, ramping up to a maximum of \$150 000 per annum in the final year of the WET rebate wind back period to assist each wine producer support Wine Australia's export marketing activities in addition to any existing arrangements for development of foreign export markets through other government agencies.

We recommend in respect to the merger of eligible wine producer entities during the WET rebate wind back period that eligibility of entities be maintained until the final year whereby the ultimate combined entity would qualify for a single rebate.

#### **The Australian Government notes these recommendations.**

As outlined in response to Recommendation 1 of the Committee report, the Government announced reforms to the WET Rebate as part of Budget 2016-17.

#### **Recommendation 5**

We recommend that in accordance with Senate Standing Order 25(2)(a) the Economics Committee undertake an inquiry into the performance of the Australian Competition and Consumer Commission with respect to its role in the prevention of the misuse of market power by certain retailers in dealing with the wine industry.

#### **The Australian Government notes this recommendation.**

An inquiry under Senate Standing Order 25(2)(a) is a matter for the Senate. If the Senate is inclined to support the inquiry, the Government will assist as necessary.

## Australian Greens

### Recommendations 1

We recommend that the Government immediately phase out WET rebates for producers of bulk and unbranded wine.

**The Australian Government agrees with this recommendation.**

As outlined in response to Recommendation 1 of the Committee report, the Government has announced reforms to the WET Rebate as part of Budget 2016-17. These reforms include phasing out WET rebates for producers of bulk and unbranded wine through tightened eligibility criteria that will come into effect on 1 July 2018.

### Recommendations 2, 3 and 4

We recommend that the Treasury model the sectoral impacts of various volumetric-based taxes on wine, considering producer size, type and locational data. This analysis should be used as the basis for any compensation or readjustment scheme necessary during a transition to a volumetric tax on wine.

We recommend that the Government work with wine industry stakeholders to design and determine eligibility for a rebate scheme for small wine producers to accompany the introduction of a volumetric tax on wine.

We recommend that the Government introduce a volumetric tax on wine and set a timetable to phase it in.

**The Australian Government does not agree with these recommendations.**



## Senator Nick Xenophon

### Recommendations 1, 2, 3, 4 and 5

Keep the WET rebate in line with the original policy intent of delivering long-term benefits to industry and tourism in regional Australia

Stop the rebate going to unintended recipients and shut down the schemes.

Phase out the WET rebate on bulk and unbranded wine over four years to advance strong brands that command consumer loyalty and profitable margins to reinvest back into regional Australia.

Abolish the separate New Zealand rebate arrangements that provide preferential treatment to NZ wine producers and replace it with a level playing field for all claimants, irrespective of nationality.

Encourage winery consolidation, where appropriate, by introducing transitional WET rebate measures that allow the separate rebate entitlements of the merging entities to be phased down to one entitlement over four years.

#### **The Australian Government notes these recommendations.**

As outlined in response to Recommendation 1 of the Committee report, the Government has announced reforms to the WET Rebate as part of Budget 2016-17.

### Recommendation 6

Return \$44m of government savings from these reforms to industry to boost marketing of Australian wine to grow export demand.

#### **The Australian Government notes this recommendation.**

As outlined in response to Recommendations 9 and 10 of the Committee report, the Australian Grape and Wine Authority will be provided with \$50 million over four years to boost Australian wine promotion, wine tourism and exports.

### Recommendation 7

Provide industry support to assist those impacted by the changes.

#### **The Australian Government notes this recommendation.**

As outlined in response to Recommendation 1 of the Committee report, the government is implementing a coordinated suite of measures developed with the Australian wine industry after extensive consultations on reforms to the Wine Equalisation Tax (WET) rebate arrangements.

### **Recommendations 8 and 9**

I recommend an effects test in respect of abuses of market power.

I recommend divestiture laws as a penalty in cases of abuse of market power.

#### **The Australian Government notes these recommendations.**

The Government has supported the recommendation of the Final Report to amend Section 46 (misuse of market power) of the *Competition and Consumer Act 2010*, including the introduction of an “effects test”.

The Government notes the Final Report did not recommend divestiture laws as a penalty for the abuse of market power. The Final Report found divestiture laws would have broader impacts than reducing the size of a firm, including impact on the firm’s general efficiency, which may have negative flow-on effects to consumer welfare.

### **Recommendation 10**

I recommend an overhauled and strengthened mandatory code of practice to provide protection to growers and wine makers from unconscionable practices and abuses of market power.

#### **The Australian Government notes this recommendation.**

The Government notes the Committee was persuaded of the value of the voluntary code and it has yet to achieve its potential as a fair dealing framework. There is also a lack of evidence that Government intervention in the industry is required, including by a mandatory code of conduct.

The Government further notes that existing provisions within the *Competition and Consumer Act 2010* provides growers and winemakers with protection from unconscionable conduct and the abuse of market power. Sections 20-22 of the Australian Consumer Law (Schedule 1 of the Act) address unconscionable conduct and Section 46 in Part IV of the Act prohibits the misuse of market power.

The Government’s response regarding the voluntary industry-owned code of conduct, is outlined in Recommendations 11 and 12 of the Committee Report.