

BRINGING THE OUTSIDERS IN: WHY SOCIO-LEGAL SCHOLARS SHOULD BE PART OF TAX LAW REFORM DEBATES

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I INTRODUCTION

Almost 15 years ago there were calls for ‘a sociological analysis of the role of law in economic life’¹ which has happened to a large extent but not in the area of taxation law. This is odd given the critical role taxation plays in society. As Stephen Mills observed ‘[i]t is one of the empirical certainties of history that no structural society has ever arisen without taxation’.² Aside from its role in revenue raising taxation also has important social and political, economic and wealth redistribution functions.³ For example certain concessions and duties can be used to mould social behaviour by encouraging or discouraging certain activities, taxation on certain goods can be used to modify consumer behaviour by making products more or less expensive and taxation can be used as a mechanism to create economic equality by ‘taking from the rich to give to the poor’.

How well a tax system performs these roles is normally judged by whether it can meet its revenue raising objective while balancing the core tax policy principles of equity, simplicity, and efficiency.⁴

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¹ Richard Swedberg, ‘The Case for an Economic Sociology of Law’ (2003) 32 *Theory and Society* 1, 1.

² Stephen Mills, *Taxation in Australia* (London; Macmillan, 1925) 1.

³ See Graeme S. Cooper, ‘The Benefit Theory of Taxation’ (1994) 11(4) *Australian Tax Forum* 397.

⁴ For example see Australian Government *Re:think Tax discussion paper* (2015), chapter 2, 14. The paper defines equity as fairness in the distribution of the tax burden; simplicity as the tax system being easy to understand and simple to

Often these criteria are difficult to define and impossible to apply simultaneously requiring trade-offs between criteria in order to attain one over the other. For example where legislation is overly complex this can cause misallocation of resources, however in order to be equitable tax legislation often has to be more voluminous in order to take account of a range of circumstances. Finding this balance can be difficult. These analyses are generally performed by economists, public policy experts and doctrinal lawyers. In economic theory it is generally assumed that the decisions of actors in economic contexts will be to maximise profits based on rational calculations as to likely outcomes; although this has been criticised even within economics.⁵ Within economic sociology ‘the notion of embeddedness has served as the crucial counter-concept used by economic sociologists ... to mark a distinctive approach to the understanding of economic processes’.⁶ As many evaluations of taxation reform continue to be based on the concept of the rational actor this paper will use as a starting point theories addressing the concept of embeddedness to support the assertion that socio-legal scholars should be more involved in the process of tax law reform. Although it should be noted that this is but one approach to theorising and researching tax law in sociology and many other approaches could bring equally important insights.

The concept of embeddedness has been used in a number of different contexts over the years and has therefore created some confusion.⁷ Arguably it was first put forward by Polanyi in 1944 in *The Great Transformation*⁸ however it did not gain significant

comply with; and efficiency as economy in tax collection, ensuring the lowest possible cost over and above the revenue that is raised.

⁵ Jens Beckert, ‘Imagined Futures: Fictional Expectations in the Economy’ (2013) 42 *Theory and Society* 219.

⁶ Jens Beckert, ‘Economic Sociology and Embeddedness: How Shall We Conceptualize Economic Action?’ (2003) 37 *Journal of Economic Issues* 769, 769.

⁷ Roger Cotterrell, ‘Rethinking “Embeddedness”: Law, Economy, Community’ (2013) 40 *Journal of Law and Society* 49, 50.

⁸ Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon, first published 1944, 2001 ed).

traction until 1985 with the work of Granovetter.⁹ Broadly it refers to ‘the social, cultural, political, and cognitive structuration of decisions in economic contexts. It points to the indissoluble connection of the actor with his or her social surrounding’,¹⁰ and suggests that economic conduct is embedded within, and influenced by, wider social structures, institutions and cultures. The concept is used to critique standard economic models that rely on the idea that the market is self-regulating.¹¹ In economic sociology embeddedness has been used to explain how the decisions of rational actors (or calculative agents) operating within the market are influenced by social and political context.¹² Within sociology of law and economic sociology of law literature the concept has recently been re-analysed in order to provide a more precise way of imagining the links between economic and other social relations.¹³ In particular a ‘community lens’ is used to augment theories of embeddedness by seeing law’s involvement with economic relations as that of regulating networks of community.¹⁴

These theories are relevant to an analysis of taxation law and its reform because while the conventional view begins with the assumption that the market is self-regulating¹⁵ this is clearly not the case. Particularly in the provision of ‘merit goods’,¹⁶ the free-market

⁹ Mark Granovetter, ‘Economic action and social structure: the problem of embeddedness’ (1985) 91(3) *American Journal of Sociology* 481.

¹⁰ Beckert, ‘Economic Sociology and Embeddedness’, above n 5, 769.

¹¹ Bryan S Turner, *The Cambridge Dictionary of Sociology* (Cambridge University Press, 2006) 163.

¹² Michel Callon, ‘The Laws of the Markets. Introduction: The Embeddedness of Economic Markets in Economics’ in Michel Callon (ed), *The Laws of the Markets* (Blackwell, 1998) 1, 1.

¹³ Cotterrell, above n 7, 50.

¹⁴ Amanda Perry-Kessaris, ‘Reading the Story of Law and Embeddedness through a Community Lens: A Polanyi-Meets-Cotterrell Economic Sociology of Law?’ (2011) 62 *Northern Ireland Legal Quarterly* 401; Cotterrell, above n 7.

¹⁵ CM Allan, *The Theory of Taxation* (Penguin, 1971) 13; R A and P B Musgrave, *Public Finance in Theory and Practice* (McGraw-Hill, 2nd ed, 1976).

¹⁶ Generally commodities which are judged beneficial because of need rather than ability to pay: see Musgrave, above n 15, 65.

struggles to make adequate supply.¹⁷ The reason for this ineffectiveness is generally put down to the difficulties associated with perceiving and evaluating externalities. Externalities in this context are the costs (or benefits) imposed upon others outside an economic relationship.¹⁸ A negative externality generally occurs where a person, in the absence of any legal requirements or incentives not to, maximises their own well-being or profitability without considering the cost to an external person, and the external person must then expend resources combating the effects of the principal's actions, for example the costs to family and society when an alcoholic develops liver cancer and requires expensive treatment or hospitalisation. While sometimes referred to as a 'market failure' this not mean that nothing good was produced, more precisely in terms of efficiency or the provision of socially desirable goods, the best result that could have been obtained was not achieved in practice.¹⁹

Taxation is a tool that can be used to provide incentives or disincentives to modify patterns of supply and consumption and restore efficiency. It may not however be the only means of doing this. Other more direct regulation in areas such as trade practices, zoning or labelling may be more efficient. Alternatively education campaigns or even criminal laws may be useful. When reforming tax laws legislators are therefore seeking to identify potential externalities, to quantify them, so that they may correct a person's inadequate analysis of their own behaviour whether through taxation or another law reform initiative.

The main purpose of this paper will be to show, by analysing the ongoing debate on reform of wine tax in Australia, how theories of economic sociology help explain the issues experienced by legislators in attempting to reform these laws. Firstly the paper will outline theories of legal and economic sociology proposed by

¹⁷ Ibid 65.

¹⁸ Ibid ch 3.

¹⁹ Michel Callon, 'An Essay on Framing and Overflowing: Economics Externalities Revised by Sociology' in Michel Callon (ed), *The Laws of the Markets* (Blackwell, 1998) 244, 247.

Cotterrell and Callon before providing a case study analysing wine tax reform in Australia within the context of these theories and providing a summary of the theoretical ideas in this context. Analysing the wine tax reform debate in this way will demonstrate that currently proposed reforms do not strike the right balance of solidarity within and amongst networks of community. While these theories of social research are but one example it's hoped the insights they provide will highlight the potential generally for additional socio-legal inquiry into tax law reform. Note that a complete explanation of the background to some of these theories cannot be provided in this space.

II ECONOMIC AND NON-ECONOMIC NETWORKS OF COMMUNITY

Within economic sociology of law Roger Cotterrell has 'advocated the use of a "law-and-community" methodology to "clarify the contexts in which decisions about regulation must be made"'.²⁰ He argues that the social environment in which law operates is composed of networks of community, some of which are dominated by economic relations. Rethinking embeddedness in this way sees the economic as an aspect of the social, with regulatory conditions and requirements that reflect the particular characteristics of economic relations and the variety of bonds that hold together the networks of community they are a part of.²¹ The role of the socio-legal scholar is to focus on the regulatory issues presented by the interaction of different types of social relations in communal networks. When considering opportunities for regulatory design Cotterrell states the purpose of such a study would include asking 'how far regulation can control major economic networks in a way that promotes solidarity *beyond* them, prevents their cultural *isolation* from wider society, and ensures their social *utility*'.²² When considered in the context of tax policy a study asking these questions can provide a better basis on which to determine if proposed tax

²⁰ Amanda Perry-Kessaris, *Global Business, Local Law* (Routledge, 2008) 5.

²¹ Cotterrell, above n 7, 50-1.

²² Cotterrell, above n 7, 66 (emphasis in the original).

regulation can meet its revenue raising objective while balancing the core tax policy principles of equity, simplicity, and efficiency.

The work of Cotterrell draws on Weber's categorisation of four ideal types of social action. He explains that relations of community can be based on traditional (eg shared customs, language, history), instrumental (eg shared results based projects, often economic in nature), values-based (eg shared beliefs or convictions such as religion) and affective (eg shared affections or emotional states) relations which are almost always mixed together in complex ways. 'Networks of community' can then be considered a unit of analysis,²³ a way of thinking about social interactions based on 'mutual interpersonal trust'.²⁴ This also acts as a reminder that any actor will likely be embedded in multiple types of community at the one time.²⁵

Cotterrell's work further distinguishes between economic and non-economic networks of community. An economic network of community is one where the dominant relation binding the group together is instrumental eg commercial networks. Non-economic networks of community are those dominated by one of the other ideal types. However a 'community lens' reveals that while one type may be dominate it's unlikely to be the exclusive relation and there will be a complex interplay of all four in any one situation. Cotterrell gives the example of a market network with predominately economic (instrumental) relations. A closer analysis though would reveal emotional allegiances or rejections at play (affect relations), the impact of customary practices in a shared work environment (traditional relations) and perhaps a need to re-evaluate the nature and purpose of economic networks within society (value relations).²⁶ In this way the community approach allows 'a sociological analysis of the role of law in economic life' to be a realistic recognition of economic networks and to emphasize 'the importance of studying

²³ Perry-Kessaris, 'Reading the Story', above n 14, 404.

²⁴ Cotterrell, above n 7, 55.

²⁵ Perry-Kessaris, 'Reading the Story', above n 14, 404.

²⁶ Cotterrell, above n 7, 56.

“non-economic” components of economic networks, as well as the economic aspects of networks of community that are not apparently organized to serve primarily economic aims’.²⁷

The community lens can highlight the role of law both as a regulator of interactions between individuals, allowing them to promote their own values and interests, and as a communal resource, directed towards supporting stable and trusting networks of community.²⁸ Power however will operate differently both between and within communal networks and conflict can arise in both situations.²⁹ Where promoting social cohesion is the main aim of legal regulation analysis of potential or existing regulations can take into account these instabilities in power as well as the mix of different relations involved. The analysis can assess the internal governance structure of networks and identify problems with harmonising the various relations.³⁰ Ultimately ‘law should be seen as a means of influencing elements of culture (values, customary practices, patterns of material interests, collective allegiances, and so on) within economic networks of community, as well as being influenced in its turn by its interaction with them’.³¹ By mapping connections between networks, and recognising the law and the economy as ‘social phenomena occurring on all, interconnected, levels of social life’³² this work can also move towards overcoming some of the criticisms of embeddedness.³³

²⁷ Ibid 56.

²⁸ Perry-Kessaris, ‘Reading the Story’, above n 14, 410.

²⁹ Cotterrell, above n 7, 57.

³⁰ Ibid.

³¹ Ibid 61.

³² Amanda Perry-Kessaris, ‘Anemos-Ity, Apatheia, Enthousiasmos: An Economic Sociology of Law and Wind Farm Development in Cyprus’ (2013) 40 *Journal of Law and Society* 68, 69.

³³ See G Krippner et al, ‘Polanyi Symposium: A Conversation on Embeddedness’ (2004) 2 *Socio-Economic Review* 109, 110: ‘the basic intuition that markets are socially embedded has led economic sociologists to take the market itself for granted. The result is a curious underdevelopment of the concept of the market in economic sociology’.

III FRAMING AND OVERFLOWS

As a socio-legal scholar Cottrell's work provides a fairly abstract approach to the question of analysing legal regulation; the work of Michel Callon, an economic sociologist, then suggests how empirical research may be conducted on certain economic interactions requiring regulation. In *An Essay on Framing and Overflowing* Callon relies on both Goffman's work on framing and embeddedness theory as a means for identifying 'overflows', his sociological revision of the concept of externalities.³⁴ Goffman uses the concept of the frame to explain interpersonal relationships.³⁵ The frame establishes a boundary within which interactions take place more or less independently of their surrounding context.³⁶ Callon contributes to this by theorising that the framing process does not just depend on commitment by the actors, but is rooted in the outside world, in various physical and organisational devices.³⁷ To illustrate, Callon extends Goffman's metaphor of a stage performance. He contends it is not just the physical framework, including the theatre building with its specific architecture and operation (dimmed lighting, a raised curtain etc), which frames the behaviour of people observing the performance, but also the institutional framework within which this is contained.³⁸ The rights of authors, safety regulations and tax incentives all work to maintain the physical framework. Similar analogies Callon says can be drawn with economic interactions such as contract negotiations and commercial transactions.³⁹

Identifying everything that contributes to the frame then is very difficult and, following constructivist sociology logic, complete framing is not only expensive but nearly always imperfect with overflows (or externalities) a normal part of all interactions.⁴⁰ Callon

³⁴ Ibid.

³⁵ E Goffman, *Frame Analysis — An Essay on the Organization of Experience*, (Harper Colophon Books, 1974).

³⁶ Callon, 'An Essay' above n 19, 249.

³⁷ Ibid 249.

³⁸ Ibid 249.

³⁹ Ibid 250.

⁴⁰ Ibid 252.

states that the concept of embeddedness, that the actor in economic contexts maintains an indissoluble connection of with his or her social surrounding, affirms the omnipresence of overflows. As a person's behaviour within an economic market can never be fully separated from the network of associations in which they are involved they must therefore always be continuously contributing to this network. While framing may seek to extricate or disentangle a person from this network, because the frame is never hermetically sealed, overflows will inevitably occur.⁴¹ Constructivist sociology, Callon stresses, does not say it's impossible to put such frameworks in place, nor that such an objective is not worth pursuing. But it is primarily interested in showing that such a framing process, in addition to requiring expensive physical and symbolic devices, is always incomplete and that without this incompleteness would in fact be wholly ineffectual. Callon states that:

By focusing on the omnipresence of overflows, on their usefulness, but also on the cost of actions intended (partially) to contain them, constructivist sociology highlights the importance of the operations required to identify and measure these overflows. It also encourages us to question the mechanisms used to create frames by suggesting ways in which the social sciences might help to develop or to confine such spaces of calculability.⁴²

It is not enough then to identify that there are overflows but also to measure them. This requires identification not only of the effects of overflows, but who is responsible for them and who is affected by them.⁴³ This is difficult because overflows are lacking in economic significance unless they give rise to evaluations and measurements and without clearly defined measuring instruments agents cannot negotiate an agreement as they cannot legitimately calculate their respective interests.⁴⁴

⁴¹ Liz McFall, 'Devices and Desires: How Useful Is the "New" New Economic Sociology for Understanding Market Attachment?' (2009) 3 *Sociology Compass* 267, 270.

⁴² Callon, 'An Essay' above n 19, 256.

⁴³ *Ibid* 257.

⁴⁴ *Ibid* 259.

In working out the mechanisms that can be used to frame situations where overflowing is the rule Callon distinguishes between ‘hot’ and ‘cold’ situations.⁴⁵ ‘Cold’ situations are those where agreement on ongoing overflows is easily reached, actors, interests and preferences are easily identified and expressed, and measuring instruments are available to accurately calculate the costs. ‘Hot’ situations on the other hand are those where everything is controversial; the identification of overflows, who is responsible and who is causing the effects, and the way effects are measured. There will usually be a large number of actors involved and their identities and interests will fluctuate constantly during the controversy with each actor putting forward mutually incompatible accounts of how the future world should look. They are incapable of reaching agreement either on the facts or on the decisions that should be taken. Framing of these situations is then a chaotic process, and control will be dependent on how the issue has evolved and whether any agreement can be reached on the existence and extent of any overflows.⁴⁶

Callon believes that these ‘hot’ situations are becoming more common and difficult to ‘cool’ down, ie, arrive at a consensus on how the situation should be described and how it is likely to develop.⁴⁷ He highlights that in these cases externalities will be central to public debates but conclusions will not be obvious. The experts involved will likely emphasize differences between approaches in order to avoid making superficial commitments, and those actors who are affected economically will become more and more involved in maintaining a state of controversy and ignorance. They will be able to influence the outcomes of the debate by introducing arguments and problems previously absent and drowning out others.⁴⁸ In his article Callon uses the example of the British mad cow crisis in which the voices of vets, animal farmers, animal feed manufacturers, the British government, proponents of deregulation, the media, biologists and butchers all contributed to an

⁴⁵ Ibid 260-1.

⁴⁶ Ibid 261.

⁴⁷ Ibid 262-3.

⁴⁸ Ibid 263.

escalating controversy that lurched first one way and then the other as neither the knowledge base nor the methods of measurement were certain. The actors and their interests were in constant fluctuation and when they entered the debate they were incapable of reaching agreement.⁴⁹

When attempting to negotiate and re-frame these ‘hot’ situations Callon asserts that the identification and measurement of externalities should take priority. There should be an emphasis on the production of an acceptable knowledge base and calibrated, certified measuring instruments to enable accurate mapping of overflows.⁵⁰ It also requires the identification of the actors who produce these externalities and the agents who benefit or suffer from them.⁵¹ The result is two distinct negotiations, one to identify overflows and a second negotiation to frame them. This he says is where sociology comes in, because it has the tools necessary for describing the dynamics of these confused situations.⁵² These tools can help keep track of the controversies and the networks to which the actors involved belong without taking sides. Further it can help with the work of framing by ‘improving the visibility of various efforts to keep track of overflows as well as the visibility of the disagreements or agreements to which they give rise’.⁵³

IV WINE TAX REFORM IN AUSTRALIA: IDENTIFYING OVERFLOWS AND MAPPING NETWORKS OF COMMUNITY

While Callon’s theory of ‘framing and overflows’ was originally discussed in the context of transactions between individual or

⁴⁹ Ibid 260-1.

⁵⁰ Ibid 266.

⁵¹ Ibid 256.

⁵² Ibid 263. Callon suggests examples of these tools can be found in M Callon, J Law and A Rip (ed), *Mapping the Dynamics of Science and Technology*, (MacMillan, 1986) and B Latour, *Science in Action* (Harvard University Press, 1987).

⁵³ Ibid 263.

corporate actors it is not difficult to see how this could be applied to the process of tax law reform. As discussed above the use of taxation as a tool to regulate patterns of behaviour necessitates the identification of externalities or ‘overflows’ in order to determine the most efficient law. Where the purpose of these laws is also to promote social cohesion Cotterrell’s ‘community lens’ can provide assistance in determining what will achieve stability both between and within the various networks of community involved. This in turn provides a basis for determining whether a proposed reform can meet revenue objectives and be considered fair, easy to understand and comply with and efficient within the context of these various networks of community.

In order to understand the current state of wine tax reform in Australia it is necessary to reflect on its evolution and the steps that have been taken by the government in attempting to ‘reframe’ it. This will identify the characteristics which have resulted in the debate on wine tax reform becoming, in Callon’s language, a ‘hot’ situation. Using a ‘community lens’ we can begin to identify the various actors and the communal networks to which they may belong. In turn this will show how current reform proposals do not take into account the mixes of different types of communal relations which are exhibited and so cannot lead to new regulation which reflects the principles of good taxation.

Australia currently taxes alcohol in two ways. Beer and spirits are taxed on a volumetric basis per litre of alcohol with differing rates depending on alcohol type, concentration, commercial use, and container size. Wine and similar products such as cider, mead and sake are subject to a 29 per cent *ad valorem* tax on the wholesale price of the product. This is known as the Wine Equalisation Tax (WET). The WET was introduced in July 2000 along with the goods and services tax (GST).⁵⁴ The purpose of this tax was to ensure a tax neutral revenue position (wine was previously subject to sales tax of

⁵⁴ *A New Tax System (Goods And Services Tax) Act 1999* (Cth) (GST Act).

approximately 41 per cent) and keep wine prices stable.⁵⁵ In conjunction with this new tax a 14 per cent WET rebate was also introduced for cellar door and mail order sales up to a wholesale value of \$300,000 per annum,⁵⁶ this rebate was subsequently extended and prior to the budget announcement in May of 2016 a tax rebate of up to \$500,000 per fiscal year was available to all wine producers.⁵⁷ This equated to an exemption from liability to pay the WET on approximately the first \$1.7 million of domestic wholesale wine sales. Groups of associated producers though were limited to a total rebate of \$500,000.⁵⁸

Numerous issues arose with the operation of the WET and from 2007 there were various calls for reform of both the WET and alcohol taxation in general. The Henry Review which released its final report in 2009 found the WET was not well suited to reducing social harm and that the WET rebate — as it was structured — encouraged small-scale production and allowed economically unviable producers to remain in the industry, suggesting an inefficient use of land, water and capital resources.⁵⁹ It was also concluded that the WET rebate was discouraging mergers within the wine industry and increasing the input costs of otherwise successful wineries.⁶⁰ The main policy recommendation of the Henry Review was that all alcoholic beverages should be taxed on a volumetric basis, which, over time, should converge to a single rate, with a low-alcohol threshold introduced for all products.⁶¹ This would have replaced the WET (and rebate) in the future.

⁵⁵ Bills Digest No 151 1998-99, A New Tax System (Wine Equalisation Tax) Bill 1999.

⁵⁶ Supplementary Explanatory Memorandum, Indirect Tax Legislation Amendment Bill 2000, [2.29].

⁵⁷ *Tax Laws Amendment (2006 Measures No 3) Act 2006* (Cth), sch 14.

⁵⁸ *Ibid.*

⁵⁹ Australian Treasury, *Review of Australia's Future Tax System Final Report* (Commonwealth of Australia, 2009), 438 (Henry Review).

⁶⁰ *Ibid* 438.

⁶¹ *Ibid* 442.

In 2012 in response to these issues some ad hoc changes were made to the WET legislation to try and prevent multiple producers claiming the WET rebate on the same wine.⁶² Further the ATO released various policy documents outlining how it believed the existing anti-avoidance provisions would operate in certain situations.⁶³ Then in 2013 the Hon Tony Abbott announced a major review of taxation⁶⁴ and, while the Turnbull Government ultimately abandoned this process, numerous discussion papers were produced and extensive community consultation took place as a result. In respect of WET reform Treasury prepared a discussion paper on the operation of the WET rebate to help inform consideration of the issue.⁶⁵ Many of the Henry Review findings about the WET rebate were reflected in the WET rebate discussion paper. In addition the paper highlighted increasing concern about abuse of the WET rebate, and a number of schemes that had arisen in recent years specifically for the purpose of improperly accessing the rebate. For example, bulk wine purchasing schemes allowed wineries to gain access to wine that was subsidised by multiple rebates and special blending of bulk wine arrangements and changes in contractual arrangements allowed access to additional rebates.⁶⁶ Of most concern were “virtual” wine producers that claimed the WET rebate without having any actual involvement in the winemaking process, for example by purchasing grapes or bulk wine and then contracting out the manufacturing or blending process.⁶⁷

⁶² *Tax Laws Amendment (2012 Measures No 5) Act 2012* (Cth).

⁶³ Taxpayer Alert TA 2013/2; Australian Taxation Office, ‘Wine Equalisation Tax Ruling WETR 2014/1 Wine equalisation tax: arrangements of the kind described in Taxpayer Alert TA 2013/2 Wine equalisation tax (WET) producer rebate schemes’.

⁶⁴ Australian Government, ‘Transcript of the Hon Tony Abbott MHR, Address to the National Press Club Election 2013’ (Press Release, 2 September 2013), 7 <http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/2705200/upload_binary/2705200.pdf;fileType=application%2Fpdf#search=%22media/pressrel/2705200%22>.

⁶⁵ Australian Government, ‘Wine equalisation tax rebate’ (Discussion paper, August 2015), <http://treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2015/Wine%20Equalisation%20Tax%20Rebate/Key%20Documents/PDF/WET_Rebate_Discussion_Paper_2015.ashx>(WET rebate discussion paper).

⁶⁶ *Ibid* 18-22.

⁶⁷ *Ibid*.

A *A 'Hot' Situation and the Overflows of Wine Production in Australia*

Various reports have been produced over the years by interested parties and numerous submissions have been received in response to the reviews discussed above. These all reflected very different perspectives on how reform should be undertaken, or in the language of Callon they 'put forward mutually incompatible descriptions of future world states'.⁶⁸ In particular they showed a lack of clarity over the policy intent of the WET in general and what a sustainable wine industry should look like. The stated policy intent of the WET rebate when introduced was to support small winemakers particularly in rural Australia.⁶⁹ However, due to the numerous amendments extending the rebate, the number of potential recipients along the production and distribution chain grew significantly. Wine industry stakeholders have suggested that a sustainable wine industry is one where the production of high quality wine results in successful and recognisable Australian brands in the export market.⁷⁰ They stated that, if Australian wine producers continued to focus on lower value wine, the wine industry would not be competitive and would not experience strong future growth, because Australian producers have higher costs of production than major competitors in the low price wine market.⁷¹

Submissions from health advocates suggested that a better policy objective would be to address spillover costs,⁷² essentially costs arising from alcohol abuse. These groups pointed to a large volume

⁶⁸ Callon, 'An Essay', above n 19, 260.

⁶⁹ Supplementary Explanatory Memorandum, Indirect Tax Legislation Amendment Bill 2000, [2.38]-[2.39].

⁷⁰ WET rebate discussion paper, above n 65, 23.

⁷¹ Ibid.

⁷² Foundation for Alcohol Research & Education, Submission 1 to Treasury, *Re:Think Tax*, 2015 (FARE); Gilbert and Tobin, Centre of Public Law and the Indigenous Law Centre, Submission to Treasury *Re:Think Tax*, 2015 (Gilbert and Tobin); Research Australia, Submission to Treasury, *Re:Think Tax*, 2015; National Alliance for Action on Alcohol, Public Health Association of Australia and the McCusker Centre for Action on Alcohol and Youth, Submission to Treasury, *Re:Think Tax*, 2015 (National Alliance et al); Cancer Council Australia, Submission to Treasury, *Re:Think Tax*, 2015 (CCA).

of research showing that improper alcohol consumption can have significant social and health impacts on both individuals and the larger community.⁷³ Health risks include chronic cardiovascular and digestive diseases, several cancers, mental illnesses and foetal alcohol spectrum disorders and related social harms include domestic violence and family breakdown, aggressive behaviour, lowered work productivity and job loss, road-traffic accidents and alcohol related crime. The estimated costs to individuals and society for these harms have been placed at over \$15 billion dollars.⁷⁴ Alternative analysis,⁷⁵ often commissioned by the alcohol industry, has placed these costs much lower although these reports have been met with scepticism by the Australian National Preventative Health Agency.⁷⁶

The differing views on the policy intent of the tax law have meant different approaches to how reform should be drafted. The health sector generally supports abolition of the WET rebate and a move to

⁷³ See for example G Corrao et al, 'Alcohol and Coronary Heart Disease: A Meta-analysis' (2000) 95 *Addiction*, 1505; Kenneth J Pidd, Jesia G Berry, Ann M Roche and James E Harrison, 'Estimating the Cost of Alcohol- Related Absenteeism in the Australian Workforce: The Importance of Consumption Patterns' (2006) 185 (11) *Medical Journal of Australia* 637; David J Collins & Helen M Lapsley *The Costs of Tobacco, Alcohol and Illicit Drug Abuse to Australian Society in 2004/05* (Australian Government Department of Health and Ageing, 2008) <[http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/mono64/\\$File/mono64.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/mono64/$File/mono64.pdf)>; Anne-Marie Laslett et al, *The Range and Magnitude of Alcohol's Harm to Others* (Alcohol Education and Rehabilitation Foundation, 2010); Margaret H Winstanley, Iain S Pratt, Kathryn Chapman et al, 'Alcohol and Cancer: A Position Statement from Cancer Council Australia' (2011) 194(9) *Medical Journal of Australia* 479; Education and Health Standing Committee, Parliament of Western Australia 'Foetal Alcohol Spectrum Disorder: The Invisible Disability' (2012).

⁷⁴ Laslett et al, above n 73; Collins and Lapsley, above n 73.

⁷⁵ See, eg, Eric Crampton, Matt Burgess and Brad Taylor, 'The Cost of Cost Studies' (Working Paper No 29, College of Business and Economics, University of Canterbury, 2011).

⁷⁶ Australian National Preventive Health Agency, 'Exploring the Public Interest Case for a Minimum (Floor) Price For Alcohol: Final Report' (May 2013) *Promoting a Healthy Australia*, 32 <[http://health.gov.au/internet/anpha/publishing.nsf/Content/70D0F7EAE5F2A6FFCA257CCA000FFF69/\\$File/Explorin20the%20public%20interest%20case%20for%20a%20minimum%20floor%20price%20for%20alcohol.%20Final%20Report.%20May%202013.pdf](http://health.gov.au/internet/anpha/publishing.nsf/Content/70D0F7EAE5F2A6FFCA257CCA000FFF69/$File/Explorin20the%20public%20interest%20case%20for%20a%20minimum%20floor%20price%20for%20alcohol.%20Final%20Report.%20May%202013.pdf)>.

volumetric taxation based on percentage of alcohol.⁷⁷ Further support for removal of the WET and WET rebate also comes from two of the largest Australian wine producers however they do not recommend wine moves to an excise system where taxation is based on alcohol content but instead suggest a flat volume based tax rate applicable to all wine.⁷⁸ The submissions from major wine industry representative groups however suggest keeping the WET in its current form but narrowing accessibility of the WET rebate.⁷⁹

As Callon suggests will happen⁸⁰ the evidence put forwarded by these stakeholders in support of their position often emphasises the differences between them. One example is in response to health and social harms caused by excessive alcohol consumption. Public health groups rely on studies suggesting the low cost of cask wine has contributed to excessive alcohol consumption and that higher alcohol taxation, when applied correctly, can be effective in combating alcohol abuse and misuse.⁸¹ Members of the wine industry⁸² however have pointed to research which says that the general insensitivity of consumers to alcohol prices means that it can be difficult to predict how a change in price will affect wine sales.⁸³ Further they argue there are various other factors which can affect individual's preferences and often light and heavy drinkers are much less price sensitive than moderate drinkers.⁸⁴ They also rely on

⁷⁷ FARE, above n 72; Gilbert and Tobin, above n 72; Research Australia, above n 72; National Alliance et al, above n 72; CCA, above n 72.

⁷⁸ Pernod Ricard, Submission to Treasury, *Re:Think Tax*, 2015; Treasury Estate Wines, Submission to Treasury, *Re:Think Tax*, 2015.

⁷⁹ Winemakers' Federation of Australia, Submission to Treasury *Re:Think Tax*, 2015 (WFA); Wine Grape Growers Australia, Submission to Treasury, *Re:Think Tax*, 2015, 6 (WGGA); Wine Tasmania, Submission to Treasury, *Re:Think Tax*, 2015, 5; Accolade Wines, Submission to Treasury, *Re:Think Tax*, 2015, 11; Riverland Wine, Submission to Treasury, *Re:Think Tax*, 2015, 1; Murray Valley Winegrowers Inc, Submission to Treasury, *Re:Think Tax*, 2015, 8 (MVW).

⁸⁰ Callon, 'An Essay' above n 19, 263.

⁸¹ See Collins and Lapsley, above n 73.

⁸² Riverland Wine, above n 79, 1; MVW, above n 79, 6; Accolade Wines, above n 79, 11.

⁸³ Manning et al, 'The demand for alcohol: The differential response to price' (1999) 14(2) *The Journal for Health* 14.

⁸⁴ Ibid.

research which suggests typical lower cost wine drinkers (including consumers of cask wine) are aged 55 years or older and consume two or less glasses per drinking session,⁸⁵ since these consumers are not typically involved in anti-social or violent behaviour a volumetric tax on wine would be disproportionately punitive. This lack of consensus over how consumers will respond to different taxes helps to maintain the controversy.

A further example of using evidence to maintain controversy can be seen in the selective use of supporting papers. The Foundation for Alcohol Research and Education (FARE), a major supporter of a move to volumetric taxation, have stressed the importance of addressing the high social cost of alcohol but largely ignored the socio-economic role of the wine industry in regional Australia. FARE has stated that:

reforming the alcohol tax system should be a no-brainer. In fact nine separate Government reviews have recommended we do exactly that. Increasing taxes on alcohol ... is also the most cost-effective way to reduce alcohol consumption and the resulting harms, particularly among young people and risky drinkers.⁸⁶

However while each of these reviews does support reform of wine taxation only the Henry Review found that the 'the wine equalisation tax ... is not well suited to reducing social harm'⁸⁷ and recommended transition to a volumetric tax. The Winemakers' Federation of Australia has engaged in similar strategies. In many of their submissions and media releases they have relied on modelling work by Professor Kym Anderson to demonstrate that Australia is one of the most heavily taxed wine exporting nations and therefore wine should not be taxed volumetrically as any change to a higher tax rate would adversely affect the ability for wine producers to

⁸⁵ S Mueller and W Umberger, 'Myth busting: Who is the Australian Cask wine consumer?' (2009) 24(1) *The Australian and New Zealand Wine Industry Journal* 52.

⁸⁶ 'Bold alcohol tax increase delivers \$2.9 billion windfall' FARE, 10 March 2016 <<http://fare.org.au/2016/03/bold-alcohol-tax-increase-delivers-2-9-billion-windfall/>>.

⁸⁷ Henry Review, above n 59, 438.

compete in an international market.⁸⁸ They fail to mention however that Professor Anderson's work has also suggested that:

if excessive (especially binge) wine drinkers consume mostly non-premium wine, and if fine wine drinkers impose no externalities, then the use of an ad valorem tax is an especially inefficient way to try to reduce society's cost of socially harmful behaviour — and at the same time it also discourages the local consumption and hence production of finer wines.⁸⁹

This is despite the fact that this finding would support their previously stated position that Australia should focus on production of higher quality wines instead.

Some in the wine industry have also called for the WET rebate to no longer be available to New Zealand producers⁹⁰ with criticism reflected in the media.⁹¹ The WET rebate is currently provided to New Zealand producers because of obligations under the CER.⁹² Unless this agreement is amended Australia must comply with their obligations where a rebate is provided. The Henry Review previously suggested that the cost of providing the rebate to New Zealand producers would have produced better value for money to the community if it were spent on targeted rural assistance.⁹³ In its submission to Treasury in respect of the Re:think discussion paper

⁸⁸ WGGA, above n 79, 6; WFA 'FARE calls for wine tax increase rejected' 10 March 2016 <<http://www.wfa.org.au/information/noticeboard/fare-gets-it-wrong-on-wine-tax-reform/>>.

⁸⁹ Kym Anderson, 'Reforming Taxes on Wine and Other Alcoholic Beverage Consumption' (2010) 29 *Economic Papers: A Journal of Applied Economics and Policy* 197, 199.

⁹⁰ Riverland Wine, above n 79, 15.

⁹¹ Frank Chung, *Tax dollars Going Sideways: New Zealand Wine Makers Taking the Piss with 'Perverse' Rebate* (14 February 2015) news.com.au <<http://www.news.com.au/finance/small-business/tax-dollars-going-sideways-new-zealand-wine-makers-taking-the-piss-with-perverse-rebate/news-story/45553b3bf4245b01610c430c90ea2a67>>.

⁹² Under art 7(2) of the Australia New Zealand Closer Economic Relations Trade Agreement 1983 (CER) eligibility for the WET rebate was extended to New Zealand wine producers that have their wine exported to Australia.

⁹³ Henry Review, above n 59, 438.

the New Zealand Government reiterated that it expects CER obligations will be included in the examination of the WET rebate and that the core obligation of equal treatment will be preserved in any changes.⁹⁴ The WET rebate discussion paper specifically raised the issue of whether and how access by New Zealand producers to the WET rebate could be removed.⁹⁵ The Senate committee found that '[i]f 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'.⁹⁶ They confirm that removing the rebate from New Zealand producers would be considered contrary to the objectives of the CER.⁹⁷ Further, at a recent Trade Policy Review by the World Trade Organisation (WTO) Australia was advised that it appeared the WET rebate is discriminatory, has a negative effect on trade and appears not to comply with either Most-favoured-nation (MFN) or National Treatment principles.⁹⁸ Australia was asked to explain how the measures in the WET Act comply with MFN and National Treatment principles and comment on the factors that led it to maintain the WET Act. Australia refrained from answering these questions and simply advised a review of alcohol taxation was currently underway.⁹⁹

Critics of volumetric taxation of wine have also highlighted the winemaking industry's unique socio-economic role in regional Australia, significant employment footprint, contribution to export earnings, profitability, and access to capital when compared to brewers and distillers as a reason for maintaining differential treatment.¹⁰⁰ For example independent economic research

⁹⁴ New Zealand Government, Submission to Treasury, *Re:Think Tax*, 2015, 4.

⁹⁵ WET rebate discussion paper, above n 65, 28.

⁹⁶ Parliamentary Library, Bills Digest No 9 2004–05, Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004, 28 July 2004, 13 as cited in Senate Standing Committee on Rural and Regional Affairs and Transport, Commonwealth of Australia, *Australian Grape and Wine Industry* (2016), 29.

⁹⁷ *Ibid* 28.

⁹⁸ *Trade Policy Review Australia Minutes of the Meeting*, WT/TPR/M/312/Add.1, (25 June 2015), 169-170.

⁹⁹ *Ibid* 170.

¹⁰⁰ WFA, 'FARE calls rejected', above n 88.

commissioned by Wine Australia in 2015 has shown that the Australian wine sector supports 172,736 full and part time jobs, most of which are in regional Australia, including the direct employment of 68,395 full and part time jobs within the sector and a further 104,341 due to flow-on effects, equating to income of approximately \$10.4 billion; contributes \$40.2 billion to the value gross output for Australia and adds \$19.7 billion in value-added to the Australian economy.¹⁰¹ Other reports have noted that wine makers are more susceptible to externalities from changes to climate, weather and disease and grape and wine production is less flexible due to long planting lead times and prolonged fermentation, maturation, and storage periods.¹⁰² Annual vintages and difficulties with responding to consumer preferences also present challenges.¹⁰³ Therefore any changes to current taxation could have significant economic repercussions.

While the wine industries dependence upon and inherent interconnectedness to climate and weather is relied on to support differential tax treatment little mention is made about how the WET, and WET rebate, currently affect environmental sustainability. Wine production, like many other agricultural activities, impacts heavily on the environment.¹⁰⁴ Various activities throughout the wine production process present problems including: water and soil contamination from fumigation and ongoing use of insecticides, pesticides and fungicides, use of chemical cleaning agents and, waste disposal practices; soil salinity issues from extensive irrigation; soil degradation and erosion from land clearing; degradation of air quality from use of heavy machinery and emission of odours and polluted air from degradation of raw materials; noise

¹⁰¹ AgEconPlus Consulting, *Economic Contribution of the Australian Wine Sector* (18 December 2015) Wine Australia, <<https://www.wineaustralia.com/~media/0000Industry%20Site/Documents/News%20and%20Media/News/Media%20Releases/Final%20AgEconlus%20Economic%20Contribution%20Australian%20Wine%20Sector.ash>>.

¹⁰² Kym Anderson, Christopher Findlay, Sigfredo Fuentes and Stephen Tyerman, *Garnaut Climate Change Review Viticulture, Wine and Climate Change*, (2008), 5-6; WET rebate discussion paper, above n 58, 28.

¹⁰³ WET rebate discussion paper, above n 65, 28.

¹⁰⁴ Nicholas Antonas 'Wine and the Environment' in Matt Harvey and Vicki Waye (eds), *Global Wine Regulation* (2014), 96-98.

pollution from constant operation of pumps, refrigerators, crushers and vehicles; negative effects on biodiversity from land clearing causing habitat loss; and a large carbon footprint from a combination of the above activities and significantly from packaging and transportation of the finished product.¹⁰⁵ Further Grape-growing and wine-making rely heavily on access to good-quality water. Unfortunately there is often heavy competition for water resources as grape quality is generally better where rainfall is moderate.¹⁰⁶ This is a particular issue in South Australia which is the driest Australian state and produces the majority of Australia's wine.¹⁰⁷ Rainfall is supplemented in South Australia by pumping from the River Murray which unfortunately has been subject to over-allocation issues by upstream states.¹⁰⁸ Availability of water supply is then further strained during times of drought which will only be exacerbated by climate change.¹⁰⁹ Arguably the current WET structure has, by allowing producers to remain in the industry even when they are not profitable, supported the large scale unsustainable production of wine, particularly in the hot irrigated regions of Australia like South Australia. The lack of discussion around these issues provides a further example of Callon's description of a 'hot situation' where the problem is drowned out by experts more interested in maintaining a state of ignorance than reaching an agreement.

During the same period that the WET rebate submissions were being considered a Senate Standing Committee was conducting an inquiry into the Australian grape and wine industry. A report from the Committee presented summaries of the extensive discussion; submissions and witness statements received in respect of the WET

¹⁰⁵ Ibid.

¹⁰⁶ Vicki Waye 'Water and Wine' in Matt Harvey and Vicki Waye (eds), *Global Wine Regulation* (2014), 119.

¹⁰⁷ Ibid.

¹⁰⁸ MD Young and JC McColl, 'Robust Reform: The Case for a New Water Entitlement System in Australia' (2003) 36(2) *Australian Economic Review* 225 at 228 as cited in Waye, above n 106, 121.

¹⁰⁹ Peter Cullen, 'Confronting Water Scarcity: Water Futures for South Australia' (Flinders Research Centre for Coastal and Catchment Environments, Schultz Oration, 16 November 2007) cited in Waye, above n 106, 121.

and WET rebate and reflected many of the views discussed above.¹¹⁰ The Committee recommended that the Government phase out the WET rebate over five years and allocate 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. More generally, the Committee urged the Government to undertake comprehensive reform of wine taxation so that the Australian industry would remain competitive.¹¹¹ This report did not reflect a consensus though with Senators Sean Edwards and Bill Heffernan, the Australian Greens and Senator Nick Xenophon all providing dissenting reports.¹¹²

A culmination of events has resulted in this process becoming a ‘hot’ situation. Every aspect is controversial and externalities, such as health, are at the centre of the debate with no obvious conclusions. The submissions received by different stakeholders (or actors) demonstrate there are many potential overflows with some, like environmental harms, not being considered. The debate just on health concerns also shows that the positions of the various actors are mutually incompatible, for example whether volumetric taxation will change consumer behaviour, and who is responsible for potential overflows is not resolved. The way effects are measured also presents a problem — while some calculation of harms from alcohol consumption has been put forward there is no consensus on what these are. If environmental harms are considered there would likely be issues with measuring these and identifying precisely who bears the cost. Further there are a large number of actors involved and the list of actors, as well as their identities, has fluctuated in the course of the controversy. These have included wine makers, grape growers, wine wholesalers and retailers, health advocates, the Australian state and federal governments, the media, and the general public. Framing of this situation is clearly a chaotic process, the implementation and control of which depends directly on the

¹¹⁰ Rural and Regional Affairs and Transport References Committee, Senate, *Australian grape and wine industry*, (2016), ch 2.

¹¹¹ *Ibid* [2.81]-[2.83].

¹¹² *Ibid*. Dissenting report of Senator Sean Edwards and Senator the Hon Bill Heffernan, Dissenting report of the Australian Greens, Dissenting report of Senator Nick Xenophon.

evolution of the controversies involved and on the construction of an agreement regarding the reality and scope of the overflows.

B *Mapping the 'Networks of Community'*

As Callon asserts, when attempting to negotiate and re-frame these 'hot' situations, the identification and measurement of externalities should take priority. Using Cotterrell's 'community lens' we can begin to identify a few key sets of actors as well as the networks of community to which they may potentially belong.¹¹³ From the analysis above the main sets of actors contributing to the reform debate (and to either producing the overflows or representing those affected by them) are the wine producers, government actors and public health actors. While they are all engaged in the key instrumental (economic) discussion of how to reform wine tax they are acting on different motivations with differing values and interests.

The producers, as those arguably creating overflows, are primarily concerned with how reform of tax laws will affect the market value of their product and hence the continued sustainability of their business. However many are in regional farming communities and have familial relationships (affective) which must be considered. They are also contemplating how tax reform could affect industry norms, eg where businesses have always been structured a particular way but amendments to the rebate may necessitate change (traditional). For public health actors, primarily representing those suffering from the overflows, the drive appears to be in challenging the nature and purpose of the wine tax (values-based), whether it should be revenue raising or public health oriented. Government actors likely share the same concerns as public health actors as well as being concerned with how this particular economic network fits within the larger national and international political society. This includes networks within that wider context not focussed on economic relations but on the continued sustainability of the

¹¹³ The approach taken to this analysis reflects that in Perry-Kessaris, 'Anemosity, Apatheia, Enthousiasmos' above n 34.

environment (values-based) or the health and wellbeing of their loved ones (affective).

In looking at the relations within groups none can truly be said to be within stable and trusting communal networks. The producers are conflicted on what a sustainable wine industry will look like. The bigger Australian producers support a change to the method of taxation and removal of the WET rebate as it will have little economic effect on them while international wine producers are against taxation incentives that have a negative effect on their trade by favouring Australian producers. The majority of predominantly smaller Australian producers recognise the economic inefficiencies of the WET rebate but do not want to lose their individual access to it nor run the risk of paying more tax under a volumetric tax system. The government actors are then constrained by political pressures and the whims of their differing constituents. For example the dissenting report released by Senator Xenophon reflected of the views of many South Australian wine producers that the WET rebate should remain accessible.¹¹⁴ Government actors must also balance domestic priorities with international pressures stemming from relations with New Zealand and the greater international trade community. While the public health actors are seemingly in solidarity over the need to tax wine on a volumetric basis there is still some conflict over the best method of doing this as reflected in the various submissions.¹¹⁵ The lack of internal governance structure in each of these networks presents problems for harmonising the various relations but could also provide opportunities for reform.

Even this brief analysis demonstrates that there is no consensus on the construction and scope of the overflows yet the 2016 Budget announced reforms to WET.¹¹⁶ The reforms partly implement the

¹¹⁴ See Riverland Wine, above n 79; MVW, above n 79.

¹¹⁵ See FARE, above n 72; Gilbert & Tobin, above n 72; Research Australia, above n 72; National Alliance et al, above n 72; CCA, above n 72.

¹¹⁶ Commonwealth of Australia, *Fact Sheet 10: Improving the integrity of the wine equalisation tax rebate and growing exports* (4 May 2016) Budget 2016-17 <http://budget.gov.au/2016-17/content/glossies/tax_super/downloads/FS-Tax/10-TFS-Alcohol.pdf>.

Senate Committee's proposals by proposing a reduction of the WET rebate cap from \$500,000 to \$350,000 on 1 July 2017 and down to \$290,000 on 1 July 2018. Further they propose tightening the associated producer rules and eligibility criteria from 1 July 2019. These criteria will limit access to the WET Rebate to producers of packaged, branded wine that is for sale to domestic consumers, and to those with a significant interest in a winery although consultation on the details of the tightened eligibility criteria, including the definition of a winery will occur.¹¹⁷

These changes however do not address the broader issue of what the policy intent of alcohol taxation is, including concerns raised by public health actors over low tax rates imposed on cheap wine and the negative effects of excessive alcohol consumption. Nor do they address issues related to environmental sustainability and potential breaches of international trade agreements. Further some in the wine industry believe the changes go *too* far with claims many smaller 'legitimate' wineries will be forced to close due to the reduction of the rebate and changed eligibility criteria.¹¹⁸ While there is potential here for regulation which supports solidarity between the various networks of community it has clearly not yet been reached.

The evolution of the WET outlined above also demonstrates instances when economic forces have shaped changes to the tax law. When individual producers restructured their business in order to gain access to the WET rebate in the most cost efficient way it led to an over production of low quality bulk wine, access to the rebate by unintended recipients and possibly contributed to public health,

¹¹⁷ 'Wine Equalisation Tax Rebate — consultation on implementation' (Media release, 6 May 2016) 1 <<http://kmo.ministers.treasury.gov.au/media-release/066-2016/>>.

¹¹⁸ Rebecca Puddy 'Tax change a crushing blow as smaller wineries fear closure', *The Australian* (online) 17 June 2016 <<http://www.theaustralian.com.au/news/nation/tax-change-a-crushing-blow-as-smaller-wineres-fear-closure/news-story/ccb649576e0466df095b81fab33c3f65>>; David Prestipino 'Why You Might be Paying More for Your Favourite Margaret River Wine' *WAtoday.com.au* (15 June 2016) <<http://www.watoday.com.au/entertainment/your-perth/margaret-river-wine-region-future-under-threat-from-wet-tax-changes-20160614-gpis8f.html>>.

crime and environmental issues. Both the ad hoc reforms in 2012 and the currently proposed reforms have been in response to these issues. In order to prevent similar problems arising in the future reform must take account of this economic behaviour and consider whether taxation is in fact the best means of modifying these patterns.

This brief analysis brings us to a point where we can consider if the proposed reform has answered the questions originally posed by Cotterrell and whether in answering these questions it appears the reforms will maintain balance with the core principles of good taxation. The current state of debate shows that the present regulation of wine production is failing to promote solidarity within the economic network let alone *beyond* it. This means current reforms are not considered equitable by the actors within the various networks. Further it's arguable that elements of the current law design, for example providing special incentives to certain wine producers only and taxing wine in a special way when compared to other alcohol, is encouraging its cultural *isolation* from wider society. This also demonstrates a lack of equity and arguably complexity within the system. Finally the failure of the reforms to address public health and environmental concerns and the economic costs of wine market distortion caused by the WET rebate does little to ensure their social *utility*. This is a further example of a failure to ensure equity while also demonstrating inefficiency in design. A more comprehensive study of these issues could identify ways of overcoming these limitations and ensuring future proposals meet their revenue raising objectives while balancing the core principles of good taxation.

V CONCLUSION

It has been shown that the process of tax law reform is very similar to what Callon describes as 'reframing'. It also appears from looking at the evolution of WET that a focus on economic priorities does not necessarily uncover all of the relevant overflows. The use of socio-

legal analysis in these circumstances can therefore only help, rather than hinder, the goal of designing laws which support social cohesion. While the theories discussed by Callon and Cotterrell are just examples of the ways in which socio-legal theories can inform the tax reform process the brief breakdown of the WET shows the scope for additional study. A comprehensive mapping of the actors and the community of networks in which they are entangled can, as Cotterrell puts it, ‘enhance the calculability of economic relations’.¹¹⁹ In turn this will contribute positively to the overall design of tax law or alternative forms of regulation that have as their goal the coordination of relevant networks of community. It should be noted this analysis has been limited in the scope to which it can determine how well proposed reforms balance their revenue raising objective with the principles of good taxation. However, by bringing the socio-legal outsiders inside tax law reform debates hopefully we can help design tax laws which truly do promote solidarity *beyond* their immediate economic networks, prevent *isolation* from wider society and ensure their social *utility*.

¹¹⁹ Cotterrell, above n 7, 67.