



Supply chain standards to reduce the black economy

DISCUSSION PAPER

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What is the black economy?

The term 'black economy' refers to a range of disparate activities that have an impact across the economy and society. In Australia, as in many OECD countries, this activity may include: not reporting or under-reporting income, paying for work cash-in-hand, committing visa fraud, hiding behind, or misquoting, an Australian Business Number (ABN), or excise evasion.¹ The black economy is not synonymous with the use of cash alone. Cash does play a legitimate role in the market economy.

In Australia, estimates of the extent and impact of the black economy have varied, but it has been estimated that "the black economy could be as large as 3 per cent of Gross Domestic Product (GDP) today, up to 50 per cent larger than the Australian Bureau of Statistics' (ABS) 2012 estimates."²

In other countries, the black economy has been labelled the 'shadow economy' or the 'cash economy.' There are marked differences in both the prevalence of black economy activity and the ways in which countries respond. A decomposition of shadow economy activities in Estonia (mean rate of 24.94%, corrected rate of 16.21%) and Germany (mean rate of 9.37%, corrected rate of 6.02%), for example, found strong quantitative differences, based on the different economic, regulatory and political characteristics of the countries. The activities in question ranged from legally bought material for illegal activities, to illegal activities (such as smuggling), and do-it-yourself activities.³

There are a range of views about what the drivers of the black economy are, as well as its main indicators. In the same literature review conducted for the International Monetary Fund, the authors identified the following indicators as being relevant in analyses of the prevalence of the black economy in particular jurisdictions⁴:

- Tax and social security contribution burdens
- Quality of institutions or corruption
- Regulations
- Public sector services
- Tax morale
- Deterrence
- Development of the official economy
- Self-employment
- Unemployment
- Size of the agricultural sector
- Use of cash
- Share of labor force
- GDP per capita

Black economy activity does have a knock-on effect for the wider economy. For example, through failing to properly declare payments or revenue, the tax base itself can be eroded; the same tax base used to pay for increasing services as populations' age. Moreover, black economy practices can result in unscrupulous vendors consistently

1 Black Economy Taskforce (2017). [Black Economy Taskforce Final Report](#). Canberra: Commonwealth of Australia, p. 12-14.

2 Black Economy Taskforce (2017). [Black Economy Taskforce Final Report](#). Canberra: Commonwealth of Australia.

3 Medina, L. & Schneider, F. (2017). [IMF Discussion Paper: Shadow Economies Around the World: What Did We Learn Over the Last 20 Years?](#) Geneva: International Monetary Fund, p. 42.

4 Schneider, F. (2017). 'Estimating a Shadow Economy: Results, Methods, Problems, and Open Questions', De Gruyter Open, *Open Economics* 2017(1):1-29.

under-bidding competitors, potentially having a negative impact on small, medium and large businesses themselves. In addition, the black economy may cause competition issues with businesses engaging in these activities at an unfair competitive advantage compared to firms that operate within the law and community expectations. This causes the misallocation of resources away from the official sector towards less productive black economy.⁵ Moreover, the black economy can have a disproportionate impact on specific population groups, including migrant workers, for example.⁶

In response to growing concerns about the black economy domestically, in 2016 the Australian Government established the Black Economy Taskforce. The Taskforce consulted widely and engaged with other government agencies and the private sector, supported by the Treasury. A final report was presented to the Government in October 2017, containing a number of recommendations for the government to address the challenges posed by the black economy.

In May 2018, The Australian Government formally [responded](#) to the Recommendations of the Black Economy Taskforce Report, committing itself to a range of measures to improve disclosure, enable prevention and foster compliance across the economy, notably including in relation to Government procurement processes.

5 Black Economy Taskforce (2017). [Black Economy Taskforce Final Report](#). Canberra: Commonwealth of Australia.

6 Farbenblum, B. & Berg, L. (2018). *Wage Theft in Silence*. Sydney: UNSW and UTS.

What we are seeking from you: Some key questions

We are seeking your assistance in addressing the following questions. Noting the definitions of the black economy provided above, and drawing on your own experiences, please do address as many of the follows questions as possible:

1. What risk(s) exist in relation to black economy activity within your sector of the economy?
 - a. What specific reputational, legal and/or financial impact(s) might this have on your business?
 - b. What do you believe the impacts of the black economy for competition in your sector are?
2. What is your current approach to addressing any risks associated with black economy activity in your supply chain at present?
3. What current or future technology is your industry employing or will be employing to address supply chain trust and assurance issues?
4. To what extent can Standards, or other models, assist in tackling challenges associated with the black economy in the supply chain?
 - a. How prescriptive should they be?
 - b. Are there examples of best practice you can nominate, locally or globally?
 - c. Are there existing Australian or International Standards that can support these objectives already?
5. If implemented, how do you think a Standards-based compliance mechanism could operate in Australia?
 - a. Specifically, who should have carriage of implementing this mechanism?
 - b. Should this require legislation or regulatory measures?
6. Is your organisation currently required to comply with overseas jurisdiction's black economy regimes?
 - a. Is so, what are these?
7. Do you have any further comments?

Why a focus on supply chains?

Supply chains are critical to our economic activity. They enable the flow of goods and services, affecting the lives of Australians every day. Over the last 50 years, the structure of the Australian economy has changed significantly. Services have become an increasingly important part of the economy compared to goods. As goods producing industries have become more specialised in their core activities and outsourced their non-core activities supply chains have lengthened.⁷

“The supply chain encompasses all activities associated with the flow of transformation of goods from raw materials stage (extraction) through to the end user, as well as the associated information flows... (SCM) is the integration of these activities through improved supply chain relationships to achieve sustainable competitive advantage.” (Handfield and Nichols, 1999, p.2).

A number of international reports have pointed to supply chains as being an area warranting increasing attention as part of efforts to stem black economy activity. For example, a recent New York Times report on the Italian luxury goods sector demonstrated that due to the rise of global fast fashion and the disaggregation of supply chains, vulnerable groups in society are being exploited in the black economy as the demand for luxury goods has increased in recent years. The pressure on costs and speed to market for retailing has pushed many established luxury goods companies to engage with third party factory providers. These third providers in order to secure contracts with large luxury good companies are driven to a ‘race to the bottom’ in terms of employment conditions, taxation and regulatory compliance resulting in undocumented home factory workers across Italy earning a fraction of the prevailing market rate and lacking basic worker protections⁸. Cost pressures and complexity of supply chains present themselves around the world increasing the attractiveness of individuals and companies engaging in black economy activities. This presents challenges for governments to identify and deal with black economy activities in all sectors.

Within the OECD, the promotion of supply chain integrity is viewed as central to the realisation of human rights, labour rights, environmental protection and protecting economic opportunity.⁹

7 <https://www.rba.gov.au/publications/bulletin/2018/mar/structural-change-in-the-australian-economy.html>
8 New York Times (2018) Inside Italy’s Shadow Economy, accessed 16/10/2018 from <https://www.nytimes.com/2018/09/20/fashion/italy-luxury-shadow-economy.html>
9 OECD (2018). ‘Sustainable and responsible supply chains’, accessed 16/10/2018 from https://ec.europa.eu/europeaid/sectors/economic-growth/private-sector-development/sustainable-and-responsible-supply-chains_en

As a result of similar concerns, the Black Economy Taskforce Report specifically considered compliance measures to reduce risk, through a focus on the supply chain. This includes measures where the Government can lead by example. Recommendation 9.1 calls on the Australian Government to:

“...promote good tax behaviour by excluding businesses with a bad tax record (and convictions of bribery and corruption) from its procurement processes. This has two components: Commonwealth contracts should include a clause that requires contractors and their suppliers to comply with all tax legislation and regulation for the duration of the contract. For large contracts, tenderers must also provide evidence of their tax record as part of the procurement process including adopting Tax Transparency Code requirement.”

Critically, and particularly for the purposes of this consultation, Recommendation 9.2 calls on the Australian Government to:

Establish national probity standards that private supply chain certification credentials should comply with to ensure responsible supply chain management practices are followed. This would include minimum standards, use of trusted trader certification, and publication of misconduct.

Example of black economy supply chain effects¹⁰

Observation: Supply chain effects

A business participating in the black economy by operating in whole or in part will also generally be paying its suppliers with cash, in whole or in part. For example, a cafe paying its fruit and vegetable supplier in cash. That supplier may also be participating in the black economy. This can flow through multiple steps down the supply chain. Pulling the cafe, or any other of the business along that supply chain, out of the cash world can have flow on effects along the whole supply chain, moving all the business in the chain increasingly out of the shadows.

The Government, in their response dated May 2018, agreed with these recommendations and tasked The Treasury to develop a process to respond to these, including through consultation.

It is intended that this process will consider what can be put in place (such as a standard) that will make it easier for procuring entities to identify whether the tenderer is following responsible supply chain management practices.

¹⁰ Black Economy Taskforce (2017). [Black Economy Taskforce Final Report](#). Canberra: Commonwealth of Australia, p. 49.

The emerging regulatory environment in Australia

Australia is responding to issues associated with the black economy, including the phenomenon of modern slavery, in the supply chain at Commonwealth and State and Territory level. This includes measures ranging from legislation, to the use of various standards, and companies adopting their own practices. The passage of Modern Slavery legislation in jurisdictions such as New South Wales (as outlined below, case study 2) points to the increasing importance attached to specific aspects of the black economy, as well as a desire for mechanisms to ensure greater transparency and accountability. The publication, in 2017, of the report *Hidden in Plain Sight* by the Joint Standing Committee on Foreign Affairs, Defence and Trade, gave rise to the focus on the mechanisms to achieving such transparency and accountability.¹¹

In light of this changing regulatory operating environment, businesses can play a proactive role in adopting good practice through a number of channels. This can include the mandatory [Reporting Requirements](#), internal mechanisms (including embedding specific processes in-house), the use of instructive handbooks (which talk about how to comply with statutory requirements), and the development and adoption of common Standards, to comply with, and given meaning to, these existing legislative requirements, and related areas of concern. Such measures could improve the ability of procuring entities to enter into contracts with a greater degree of confidence, increasing transparency and minimising risk. The key question is whether such voluntary measures will suffice, or whether a mandated approach is necessary, depending on factors such as sector uptake and degree of impact on the drivers of the black economy that voluntary measures may have.

Case study 1: The Modern Slavery Bill

On 28 June 2018, the Australian Government introduced legislation to combat modern slavery, through greater accountability for the supply chain. If passed, this will require a significant number of multinationals doing business in Australia to prepare annual modern slavery statements describing their efforts to address modern slavery in their businesses and supply chains.

The Explanatory Memorandum for the Bill notes that the Department of Home Affairs will be assisting entities to report on their supply chains under the Modern Slavery legislation, including a requirement for a 'Modern Slavery Statement.'

A Modern Slavery Statement must cover mandatory criteria by describing:

- *the entity's structure, operations and supply chains;*
- *the potential modern slavery risks in the entity's operations and supply chains;*
- *actions the entity has taken to assess and address those risks, including due diligence and remediation processes; and*
- *how the entity assesses the effectiveness of those actions.*

Modern Slavery Statements must also identify the reporting entity, describe consultation with other entities and details of approvals, and can include other relevant information. A Modern Slavery Statement must be signed by a responsible member for the entity, approved by the principal governing body of the entity and provided to the Minister within six months from the end of the entity's financial year.

¹¹ Joint Standing Committee on Foreign Affairs, Defence and Trade (2017). *Hidden in Plain Sight*. Canberra: Commonwealth of Australia.

Case Study 2: Modern Slavery Act 2018 (NSW)

Passed through NSW Parliament on 21 June 2018, the NSW Act requires commercial organisations with at least one employee in NSW, and who have an annual turnover of \$50 million or more to produce a Modern Slavery Statement on the incidence of modern slavery in their supply chains. This only applies to organisations who do not report under the Federal regime.

What are other countries doing in relation to the black economy and supply chain? A snapshot

The table below describes some elements of the regimes that exist in specific jurisdictions, with particular reference to (a) legislation, (b) regulation and (c) other measures including Standards, including those adopted on a voluntary basis. It is not intended as an exhaustive list, but is merely intended to stimulate discussion.

Area of Focus	Examples of overarching government policy OR standards framework	Legislation and Regulation OR approach	Enforcement mechanisms	Pathway/ Means to compliance	Notes
Jurisdiction: European Union					
Human rights, ethical procurement	Ensuring member countries enact regulations that protect human rights around ethical procurement.	2014/24/EU Article 57(1) o 2014/24/EU Article 57(1) – Mandatory exclusion of candidates or tenders that have participated in criminal organisations, corruption, fraud, terrorist offences, money laundering, trafficking and child labour	None per-se. Expectation is that member countries' own laws align with EU regulation and member countries enforce.	As per other EU regulations, member bodies must prove their existing laws follow regulation or adopt/amend.	Generally regulations are overarching and performance based.
Human rights norms, ethical procurement, labour rights	Ethical Trade Initiative (ETI) - AMFORI	ETI Base Code (based on rights outlined in ILO Conventions).	Self-reporting	Self-reporting and assessment.	Voluntary mechanism
Sustainable garment value chains	European Union Commission	Public awareness raising, via formal materials	Nudging market and consumer behaviour (including through drawing reference to consumer-led campaigns).	Awareness raising.	Awareness raising, through formal channels.

Area of Focus	Examples of overarching government policy OR standards framework	Legislation and Regulation OR approach	Enforcement mechanisms	Pathway/Means to compliance	Notes
Jurisdiction: United Kingdom					
Hidden Economy, Promote tax compliance and level playing field for UK businesses, led by HM Revenue & Customs, UK Government. Focus on SME's	Protection of taxation base and government service provision (Revenue and expenditure sustainability)	Under Schedule 23 to the Finance Act 2011, HMRC has the power to gather data from relevant data holders. In 2013 and 2016, these powers were extended to merchant acquirers, business intermediaries and businesses which facilitate online payments. In addition, The United Kingdom is taking steps towards implementing 'conditionality' in some parts of the tax system. By making access to licences or services for businesses conditional on tax registration.	The UK government considered the design of a stronger 'failure to notify' hidden economy penalty which will be delivered as part of the longer term HMRC Penalties Review. HMRC will strengthen its monitoring of taxpayers previously found to be operating in the hidden economy, to keep them compliant.	The UK Government states that "the best way to tackle non-compliance is to prevent it happening in the first place, while cracking down on the minority who do break the rules. These include: promoting good compliance, preventing non-compliance by using the data to spot mistakes, prevent fraudulent claims, personalise online services and automate calculations, and responding to non-compliance by identifying and targeting the areas of greatest risk, and using tough measures.	The hidden economy deprives the UK government of funding for vital public services. The hidden economy tax gap ² is estimated at £3.5 billion for 2015-16 (the most recent year for which an estimate has been calculated) and is the fifth largest behavioural component of the 2015-16 tax gap. The hidden economy tax gap has remained relatively stable since 2009-10 at around 10% of the total tax gap.
Modern slavery	Transparency in supply chains to prevent modern slavery	Modern Slavery Act 2015	Transparency in Supply Chains reporting requirement		
Standards	Risk management, Sustainable procurement	Risk Management BS ISO 31000:2018 Risk management - Principles and guidelines BS ISO 20400:2017 Sustainable procurement.			

Area of Focus	Examples of overarching government policy OR standards framework	Legislation and Regulation OR approach	Enforcement mechanisms	Pathway/Means to compliance	Notes
Jurisdiction: USA					
Anticorruption, ethical conduct	Promotion of ethical acquisition of goods and services. Special focus on 'American Made'	Federal Acquisition Regulation (FAR) - these are called up in various US Codes, notably Code 10, Code 40 and Code 51.	Office of the Inspector General investigates breaches, civil and criminal consequences for breaches. Strongly reliant on whistleblowing.	Proof of compliance needed. Third party certifiers can provide.	
Modern slavery	Transparency in supply Chains (including for consumers).	<i>California Transparency in Supply Chains Act 2010.</i> Reporting requirement for: <ul style="list-style-type: none"> • Retail Sellers or Manufacturers • Doing Business in the State of California • With Annual Worldwide Gross Receipts in Excess of \$100,000,000. 	Prosecutorial action at the discretion of the Attorney General	Self-disclosure across: <ul style="list-style-type: none"> • Verification • Audits • Certification • Internal accountability • Training 	
Standards: Supply chain security and transparency	Security, safety and transparency.	There is no one adopted Standard(s) relating to supply chain integrity. Companies are able to be certified to ISO 28000: Supply chain security, though it has not been adopted nationally. Codes of conduct and guidelines are predominately industry-based and certain government departments have developed their own content for the industries in which they operate in, such as the FDA's Drug Supply Chain Integrity Guidelines.	Certification against a nominated standard, or code of practice.	<ul style="list-style-type: none"> • Compliance with the specifications of ISO 28000, and/or with the relevant industry code(s). 	Work is being done by the American National Standards Body (ANSI's) Homeland Security Standards Panel in ensuring security of supply chains, with the focus on preventing terrorism.

Area of Focus	Examples of overarching government policy OR standards framework	Legislation and Regulation OR approach	Enforcement mechanisms	Pathway/Means to compliance	Notes
Jurisdiction: Japan					
Anticorruption, promotion of competitive tendering	Transparency in procurement processes	Act for Promoting Quality Assurance in Public Works - this is called up either by the Accounting Act and Budget, Auditing and Accounting Act for national government bodies, and the Local Autonomy Act for local (prefecture level) government bodies.	Enforcement is undertaken by government bodies on either national or prefecture level.	National and prefecture government bodies assess	Legislation highly prescriptive.
Jurisdiction: Kenya					
Anticorruption, anti-tax fraud	Proof of compliance to taxation regulations	PRQ NO. PPOA/08/2014-2015	Assessment and compliance managed by Public Procurement Oversight Authority (PPOA)	Proof of tax compliance from 'Tax Compliance Certificate' which is issued only by Kenya Revenue Authority. Other matters (e.g. criminal activity etc) require self-declarations only.	
Jurisdiction: South Africa					
Anticorruption, anti-tax fraud	Proof of compliance to taxation regulations	National Treasury SCM Instruction No. 7 of 2017/2018.	Compliance with legislation assessed by Department of Treasury.	Proof of tax compliance from 'Certificate of Tax Compliance' which is issued only by South Africa Revenue Service (SARS)	A lot of other African countries have a similar scheme (See Kenya below). Also this similar scheme is being looked at in Fiji

SOURCE: [6], [7]

SOURCE: [10]

SOURCE: [8], [9]

Area of Focus	Examples of overarching government policy OR standards framework	Legislation and Regulation OR approach	Enforcement mechanisms	Pathway/Means to compliance	Notes
Jurisdiction: Sweden					
Human rights, ethical procurement	Transparency in procurement processes, social welfare, sustainability	Based on EU Articles: Public Procurement Act, the Utilities Procurement Act, the Act on Procurement of Concessions, and the Defence and Security Procurement Act.	Compliance managed by Swedish Competition Authority.	Proof of compliance to applicable legislation, documentation that meets the procuring authorities' requirements	
Jurisdiction: France					
Human rights and environment	Disclosure and obligations for ongoing monitoring	French due diligence law	Legal enforcement	Vigilance plan ¹²	

SOURCE: [4], [11]

- [1] Cornell Law School [Undated], 48 CFR 52.203-13 - Contractor Code of Business Ethics and Conduct, webpage, Cornell Law School, Ithica , <<https://www.law.cornell.edu/cfr/text/48/52.203-13>>.
- [2] Meulen, N V 2016, The Importance of Supply Chain Transparency in Public Procurement of Apparel: A Call to Action for the Obama Administration, webpage, International Learning Lab on Public Procurement and Human Rights, San Francisco, <<http://www.hrprocurementlab.org/blog/the-importance-of-supply-chain-transparency-in-public-procurement-of-apparel-a-call-to-action-for-the-obama-administration/>>
- [3] Sweatt, G & Oliver, R [Undated], US Government Contracting Compliance: Managing Supply Chain Ethics and Compliance Risk for the World's Single Largest Buyer, presentation, Pillsbury Law, Los Angeles.
- [4] The National Agency for Public Procurement 2017, Mapping Initiatives for Ethical Public Procurement in Europe, Report 2017:6 The National Agency for Public Procurement, Stockholm.
- [5] International Cooperation and Development 2018, Sustainable and responsible supply chains, webpage, European Commission, Brussels, <https://ec.europa.eu/europeaid/sectors/economic-growth/private-sector-development/sustainable-and-responsible-supply-chains_en?qt-node_tabs_sector_=0#qt-node_tabs_sector>.
- [6] Ohno, T & Harada, Y 2006, A Comparison of Tendering and Contracting Systems for Public Works between Japan, the United States and EU Countries, 12 Government Auditing Review, Tokyo, pp. 49-71
- [7] Kusunoki, S 2007, Japan's Government Procurement Regimes for Public Works: A Comparative Introduction, 32 Brooklyn Journal of International Law, Brooklyn, pp. 524-552.
- [8] SARS 2017, Managing Your Tax Compliance Status with SARS, webpage, SARS, Pretoria, <<http://www.sars.gov.za/ClientSegments/Individuals/TCS/Pages/default.aspx>>.
- [9] Mhlongo, N F 2014, Transparency in Supply Chain Management: A South African Local Government Case Analysis, PhD Thesis, Stellenbosch University.
- [10] Public Procurement Oversight Authority 2017, Assessment of the Procurement System in Kenya, Public Procurement Oversight Authority, Nairobi.
- [11] Government Offices of Sweden 2018, Public procurement - How it works in Sweden, webpage, Government Offices of Sweden, Stockholm, <<https://www.government.se/government-policy/central-government-administration/public-procurement---how-it-works-in-sweden/>>
- [12]] Ministry of Finance [undated], National Public Procurement Strategy, Government Offices of Sweden, Stockholm.

12 <http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf>

The purpose of this consultation and the process

Why are we doing this work?

Standards Australia is embarking on a consultation process with the Australian community to examine how Standards, and related material (such as Technical Specifications and handbooks), can support the implementation of Recommendation 9.2 of the Black Economy Taskforce Report, in light of the issues described in this discussion paper.

How can I participate?

The consultation process will be based on this discussion paper, and complemented by face-to-face consultation sessions, as well as online feedback, in November 2018. By March 2019, a report synthesising feedback and providing clear options to give effect to this recommendation will be delivered to the Treasury.

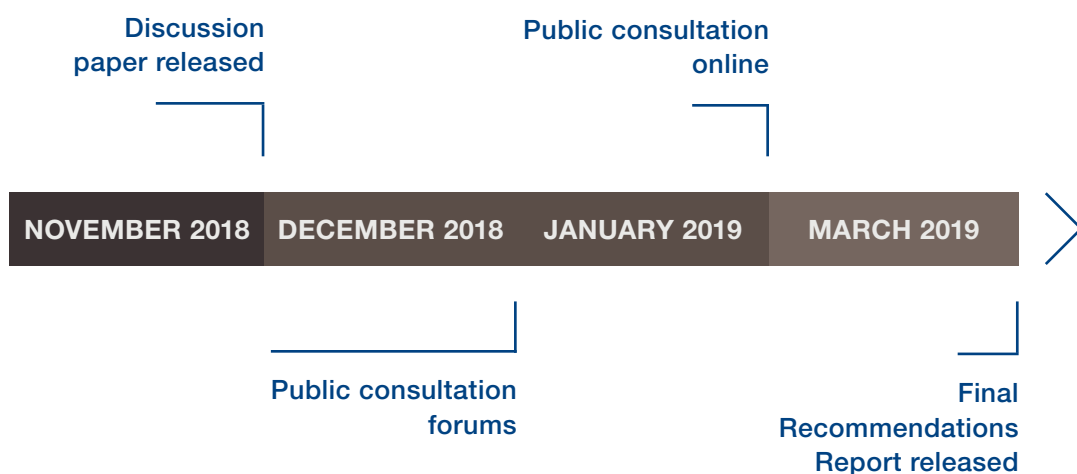
Feedback should be submitted by **1 February 2019** as an email, Word document or PDF via: SEM@standards.org.au

Consultations will be held in the following capital cities throughout November:

- Melbourne Friday 16th November 2018 [Register for Melbourne](#)
- Perth Friday 23rd November 2018 [Register for Perth](#)
- Adelaide Wednesday 28th November 2018 [Register to Adelaide](#)
- Brisbane Tuesday 4th December 2018 [Register to Brisbane](#)
- Sydney Thursday 6th December 2018 [Register for Sydney](#)
- Canberra Monday 10th December 2018 [Register for Canberra](#)

Further information on these consultation forums is available via email at: SEM@standards.org.au

The timeline



Who we are – Standards Australia

Standards Australia is the country's leading independent, non-governmental, not-for-profit standards organisation. We are also Australia's representatives to the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC). Standards Australia has three roles:

- **Standards development:** Offering stakeholders from a variety of sectors a range of pathways to develop or update new or existing standards.
- **International participation:** Participating in the development and adoption of a wide range of International Standards.
- **Accreditation of standards development organisations:** Assessing and approving other organisations to develop Australian Standards.[®]

Contact

Please contact us via email at: SEM@standards.org.au