



Australian Government

**Department of Infrastructure, Transport,
Regional Development, Communications and the Arts**

Discussion paper

Australia's possible accession to the Hong Kong International Convention for the safe and environmentally sound recycling of ships

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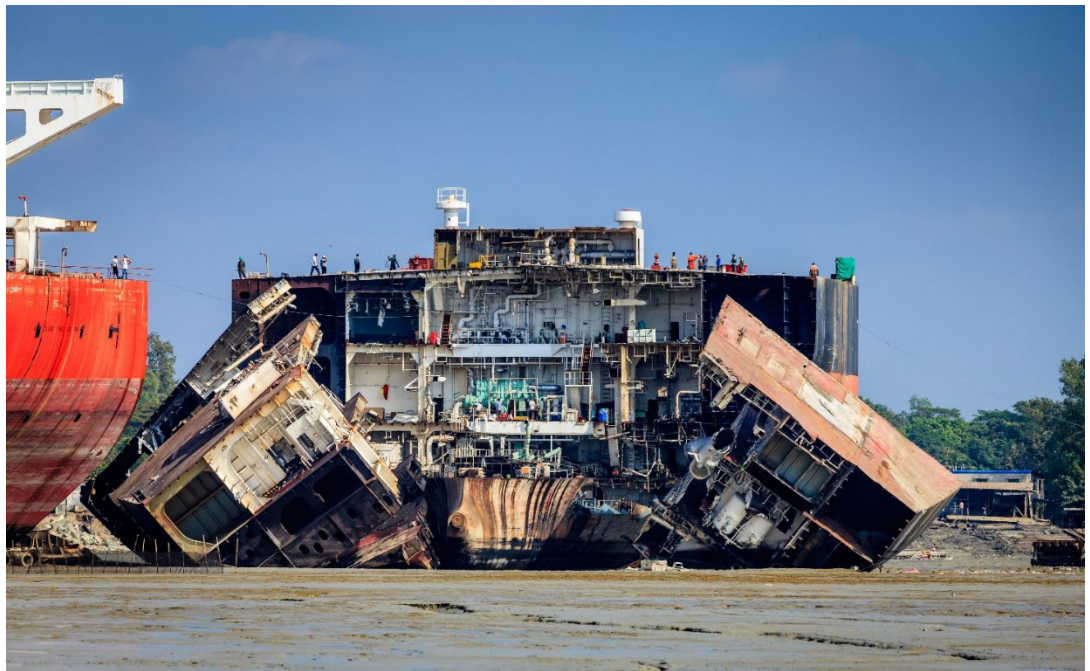


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1. Executive Summary

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department), is considering if accession to the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (the Hong Kong Convention) is in Australia's interest.

This paper provides a basis to discuss the potential implications of accession to the Hong Kong Convention with stakeholders. The Department hopes to better its understanding of the current capacity of the global ship recycling market to meet Australian recycling demands (in both OECD and Non-OECD countries) and any market pressures to be Hong Kong Convention compliant, to assess any potential risks that may present for Australian stakeholders.

The Hong Kong Convention is an international agreement developed under the auspices of the International Maritime Organization (the IMO) to address environmental and labour safety issues relating to ship recycling.

The Hong Kong Convention would apply to Australian ships or vessels over 500 GT that operate internationally, including submersibles, floating craft, floating platforms, self elevating platforms, Floating Storage Units (FSUs), Floating Production Storage and Offloading Units (FPSOs), irrespective of whether the vessel is stripped of its equipment or being towed.

The Department is considering what accession to the Hong Kong Convention might look like as an additional and complementary regime to the existing regulation of the recycling of ships through Australia's obligations under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention).

Accession to the Hong Kong Convention would restrict the use of hazardous materials in building new ships, require Australian flagged ships to carry an Inventory of Hazardous Materials which would be surveyed and verified at least every 5 years, and require Australian flagged ships to only be recycled once a recycling ready certificate is issued by the Australian authorities for recycling at a Hong Kong Convention authorised facility recognised by Australia as compliant with our international law obligations. Recycling facilities located in Australia that want to recycle international ships, would be required to produce a ship recycling plan demonstrating compliance with worker safety and environmentally sound management for each international ship proposed to be recycled which would be authorised by Australian authorities.

Questions to guide feedback from stakeholders are at Part 4, page 10.

2. The Issue

A ship or offshore facility (i.e. a ship used in floating production storage and offloading) is typically in operation for 25 to 30 years. After a ship is no longer an economically viable asset, ship owners require a way to dispose of the ship. Ship recycling is an important way of disposing of end of life ships to ensure of the global conservation of energy and resources. Approximately 98 per cent of a ship is recyclable because almost every part of a ship's hull, machinery, and fittings can be re-used. However, the current generation of retiring ships are also constructed using hazardous materials including asbestos, lead paint, heavy metals, Polychlorinated Biphenyls (PCBs) and Polycyclic Aromatic Hydrocarbons (PAHs).

Global ship breaking environment

Historically, ship breaking yards were concentrated in Europe and the US. However, with the increasing rollout of environmental and safety regulations in the developed world, ship breaking has become concentrated in South-Asia, particularly in India, Pakistan and Bangladesh. This has occurred despite the restrictions on the movement of hazardous wastes in the Basel Convention, which is discussed below. In 2021, NGO Shipbreaking Platform reports that 763 ocean-going commercial ships and floating offshore units were sold to ship recycling facilities, of which 583 were recycled in South- Asia. In 2022, of the 443 ships scrapped, 292 were sent to South Asia.

The occupational health and safety conditions and environmental impacts of ship breaking in yards in South Asia have attracted increasing international concern. Although employing large numbers of local people and providing raw materials to local economies where there is strong demand for them, there are high rates of worker fatalities, and work-related injuries and diseases.

To dismantle ships in these countries, ships are run into the beach at high tide, known as 'beaching.' Workers then dismantle the ship at low tides in a labour intensive manner with limited tools such as a hammer or blow torch and little to no protective equipment. The toxic substances on board are not contained, and leach into the sea and on the beach as there is no impervious concrete flooring to prevent the toxic substances from entering the environment. Workers do not know the location of many of the hazardous materials, and are exposed to them in their removal. Work accidents such as explosions are frequent and workers often contract diseases in relation to their handling of substances, such as asbestos, from the ships. Asbestos and other toxic materials are also reportedly, in the majority of these yards, not being disposed of in waste treatment facilities, but rather are being dumped.¹

The existing framework – the Basel Convention

The Basel Convention is an important Convention in international environment law that controls the movement and disposal of hazardous and waste materials from developed to developing countries. The Convention entered into force in 1992, and has a strong foothold internationally, with 190 countries having ratified the Convention, including Australia. Australia has implemented the Basel Convention regime through the *Hazardous Waste (Exports and Imports) Act 1989*.

The Conference of Parties to the Basel Convention have confirmed that ships destined for recycling may fall under the Convention. A waste is hazardous for the purposes of the Act if it is listed as hazardous in the Basel Convention or in the Organization for Economic Cooperation and Development Regulations. In recent years, Australia has issued permits to ships to be recycled in Alinga, Turkey under the Basel Convention.

¹ See [The Human Costs - NGO Shipbreaking Platform; Special Rapporteur's Report](#); Maruf Hussain, 'Chapter: The Environmental Impacts of Ship Breaking' in *The Environmental Impacts of Ships*, Stephen de Mora et al (Cambridge University Press, 2020).

The Basel Convention spans all hazardous wastes, not just those that are contained in old ships. The regime is based on the interaction between a country of export and a country of import. The country of export must authorise the transfer of hazardous waste to another country. However, this transfer must be premised on prior informed consent from the importing country and the exporting country must not have the capacity to deal with the materials themselves. An exporting country is obligated to bar export if it believes the materials will not be managed in an environmentally sound manner, and must reimport the material if the exporter is found to not be in compliance with the terms of the export.

Under the Basel Convention, the Australian Government has jurisdiction over ships leaving Australia for disposal and jurisdiction if a ship transits through Australia on its way for disposal.

A range of technical guidance has been developed to support ship recycling under the Basel Convention by the Secretariat for the Basel Convention, International Maritime Organization (IMO), International Labour Organization and ISO Standard 30000:2009 (Ships and marine technology — Ship recycling management systems).

A fundamental limitation of the use of the Basel Convention to prevent ships from being sent to developing countries with inadequate safety and environmental protections, is the limited reach it has over ships on the High Seas outside of States' jurisdiction. However, the Basel Convention framework has been used in recent cases in Europe to reach insurers, cash buyers and ship owners that play a part in ships being dismantled in breach of the Convention.

An example, the Iron Chieftain

In June 2018, a fire broke out on the Iron Chieftain as it was offloading dolomite at Port Kembla. The fire started on a conveyor belt and spread to one of the ship's holds and took a week to fully extinguish. The Iron Chieftain was not repairable.

An application was made to export the ship under the Basel Convention to the Jiangyin Xiangang Changjiang Shipbreaking Yard in China in October 2018. Before the application could be approved, China banned the importation of vessels for shipbreaking.

A second new application was made to send the Iron Chieftain to Türkiye for the recycling and reclamation of metals and metal compounds. The permit was granted on the condition the ship had to have all hazardous waste products removed to the standard required by the Turkish recycling facility. In accordance with the Basel Convention, it also had to make the journey avoiding entering a 'transit State' which would cause the permit to expire. This involved bunkering at sea so as not to enter the jurisdiction of another State.

In March 2019, the Iron Chieftain departed from Port Kembla to travel to Türkiye arriving in June 2019.

The emerging framework - the Hong Kong Convention

The Hong Kong Convention was drafted under the auspices of the IMO in 2009 in an attempt to address perceived deficiencies of the Basel Convention and its coverage of ship recycling. It was intended to be consistent with, but not duplicative of the requirements of the Basel Convention, and aimed to achieve both environmental and worker safety outcomes. A full copy of the text is available on the Department's Have Your Say webpage.

Unlike the Basel Convention which is based on the exporting State and the importing State, the Hong Kong Convention is based upon the jurisdiction of the ship's flag State and the recycling facility State. It is not applicable to war ships, naval vessels and government owned non-commercial ships, ships under 500 gross tonnage and ships engaged solely in domestic voyages.

As will be outlined in greater detail in the next Part, accession to the Hong Kong Convention restricts the building of new Australian ships with hazardous materials, and would require:

- Australian flagged ships that sail internationally to carry an inventory of hazardous materials which needs verification every 5 years;
- only permit recycling in Hong Kong Convention authorised facilities accepted by the Australian authorities, and
- be certified as recycling ready by Australian authorities before recycling commences.

Ships can be refused entry from ports for violations of the Hong Kong Convention and can be subject to inspection by other State Party authorities for compliance.

Ship recycling facilities that wish to recycle Hong Kong Convention State ships in Australia would be required to be authorised by Australian authorities, produce a ship recycling plan for each ship it intends to recycle, be subject to inspection and surveys by Australian authorities, and have in place a range of safety, environmental, and reporting policies and procedures in place.

The Hong Kong Convention has yet to enter into force. A more detailed assessment of the Hong Kong Convention's ratification status is provided in Appendix A.

The Conference of Parties to the Basel Convention, have been unable to agree that the Hong Kong Convention if implemented alone, achieves equivalency with the Basel Convention's standard of environmental protection.

Applying both the Basel and Hong Kong Conventions

How accession may impact stakeholders depends on how Australia implements the Hong Kong Convention and manages its obligations under the Basel Convention.

The Department is considering the practical and legal implications of applying the Hong Kong regime and the Basel Convention regime concurrently, similar to the approach currently being taken by the European Union.

The possible shortcomings of the Hong Kong Convention in achieving equivalency with the Basel Convention has been the subject of heated debate internationally. While the environmental wing of the United Nations has encouraged ratification of the Hong Kong Convention and the Hong Kong Convention does not purport to replace the operation of the Basel Convention over ship recycling, how to uphold the two Conventions and ensure core concepts of international environmental law is upheld, is a key concern for the Department. This concern will be raised in discussions with other international governments and at the IMO.

For example, the Department is concerned that recycling yards that would not amount to environmentally sound management under the Basel Convention have been added to the list of authorised facilities under the Hong Kong Convention.

The current European Union approach to date has involved the co-existence of two regulations – a Basel Convention regulation 'the EU Waste Shipment Regulation,' and a Hong Kong Convention 'EU Ship Recycling Regulation.'

The EU approach provides expanded jurisdictional reach. EU Waste Shipment Regulation applies to any decision made to recycle a ship in European jurisdiction, and the EU Ship Recycling Regulation applies to EU flagged ships, wherever they may be sailing. The Hong Kong Convention-orientated EU Ship Recycling Regulation does not allow ships to be recycled in any Hong Kong authorised recycling facility, the facility must also be on an EU approved list. The EU approved list ensures an equivalent environmental standard between the two regulations. However, the legality of such an approach should the Hong Kong Convention come into force remains in question. The Department intends to discuss this issue of implementation with international counterparts.

Recycling demand and capacity

There are concerns internationally about the ability of global environmentally sound ship recycling facilities to meet recycling demand. Recycling demand is believed to be effected by steel prices and market pressures such as the introduction of environmental regulations, decarbonisation and the impacts of COVID-19. For example in 2021 763 ocean-going commercial ships were scrapped, compared to 443 in 2022. The reason for the drop in 2022 is believed to be related to high ocean freight rates and banks' shortages in providing credits to companies to purchase end-of-life assets.

National Energy Resources Australia estimates that there will be \$50 billion of decommissioning work needed for Australia's offshore oil and gas infrastructure, with over half needing to start in the next 10 years. National Energy Resources Australia have suggested that the ability to manage the recycling and disposal within Australia could save approximately \$2 billion and support the establishment of a new industry in regional Australia – locations in Western Australia and South Australia are being considered as potential sites.

The Department would like to hear stakeholders' experiences in relation to recycling demand and capacity. We would also like to better understand the current capacity to recycle domestically, and understand barriers to establishing a ship recycling industry capable of recycling ships over 500GT in Australia.

Market pressures to accede to Hong Kong

The Department understands that there is increasing market pressure on international shipping companies to be Hong Kong Convention compliant including from the shipping finance sector and initiatives such as the sustainable shipping initiative. The Department would like to hear stakeholders' experiences of what pressures if any are being felt internationally.

3. Hong Kong International Convention on the Safe and Environmentally Sound Recycling of Ships

The Hong Kong Convention has a 2-tier design with the main governance and procedural rules for ships and ship recycling facilities defined in the main text of the convention, and additional supporting requirements and more specific regulations in an annex.

- Convention – overarching principles that tie everything together.
- Appendix – more detailed provisions about how States are to regulate ship recycling.
- Appendix 1 – lists the hazardous materials.

The IMO has also developed a range of guidelines to support State Parties, including guidance on developing a ship recycling plan; developing an International Certificate on Inventory of Hazardous Materials (Inventory of Hazardous Materials); environmentally sound ship recycling; and authorisation of ship recycling facilities.²

Regulatory obligations

Ships

The Hong Kong Convention applies to ships including submersibles, floating craft, floating platforms, self-elevating platforms, floating storage units (FSUs) and floating production and floating production storage and offloading units (FPSOs). Although the Hong Kong Convention does not strictly apply to ships under 500 gross tonnage (GT), warships, ships owned by the Government or non-commercial service, or ships that only undertake domestic voyages, State Parties are obligated to apply the Convention to these ships to an extent that is reasonable and practicable.

The Convention regulatory regime affects the entire lifecycle of a ship – from a new ship’s design and construction, the ship’s ongoing operation and upkeep, and the recycling of the ship when it is deserviced.

Restrictions on hazardous materials

The Convention both restricts and prohibits the use of certain hazardous materials in a ship’s construction or new installations on existing ships. For example, all ships are prohibited from new installations of materials containing asbestos. The full list of materials and their controls are detailed in Appendix 1 and Appendix 2 of the Convention’s Annex (pages 31 and 32 of the attached respectively).

The Inventory Certificate or “Green Passport”

The Hong Kong Convention requires ships have an International Certificate on Inventory of Hazardous Materials (which is also referred to by the IMO as a ‘green passport’). The inventory certificate is issued by a ship’s flag State, or another State that is a party to the Convention at the request of the flag State. The certificate can only be issued after the relevant State authority has verified by way of survey, the information in the ship’s Inventory on Hazardous Materials. The inventory details the hazardous materials used in the ship, their location and quantities.

The certificate can only be valid for up to 5 years, at which time authorities may renew the certificate after the completion of a renewal survey. The renewal survey verifies that the inventory is being appropriately maintained and updated. A ship can request to be additionally surveyed to ensure their ongoing compliance if they undergo repairs. A certificate is invalidated if a ship reflags or if there is found to be an issue of compliance with the Convention.

² The guidelines can be found on the IMO’s [Recycling of ships](#) page.

All new ships must have an inventory certificate upon commencement of the Convention, but existing ships have up to five years post commencement to obtain one.

All State Parties can inspect ships' inventory certificates. If there are clear grounds for believing that the ship's condition or equipment doesn't substantially correspond with the certificate or the inventory of hazardous materials, a State can undertake further inspections. Non-compliance can result in a ship being refused entry into a port. A State is liable to compensate a ship for undue detention and delays.

Recycling Ready Certificate

For a ship to be recycled under the Hong Kong Convention, it must first be issued an International Ready for Recycling Certificate by its flag State. The certificate can only be issued once the flag state has surveyed the ship and verified the inventory on hazardous materials, verified parts of the Ship Recycling Plan and the authorisation of the nominated ship recycling facility.³ The recycling ready certificate is only valid for a period for up to three months. The IMO will be notified of the identity of a ship that has been issued a ship recycling ready certificate.

Recycling only in authorised recycling facilities

A ship can only be recycled in a ship recycling facility that is authorised under the Convention.⁴

Procedures before recycling commences

Before recycling commences, a ship must take measures to minimise the amount of cargo residue, fuel oil and wastes remaining on board before entering the recycling facility.⁵ Ships must co-operate with the ship recycling facility to produce the information required to finalise the ship recycling plan.⁶

Ship recycling facility

Authorisation

A 'ship recycling facility' is a defined area, that is a site, yard or facility used to recycle ships. A ship recycling facility must be authorised by the State party in which it is located.⁷

To authorise a facility, States must conduct a site inspection and verify documentation required by the Convention.⁸ The authorisation must be contingent on a system of inspection, monitoring and enforcement to ensure the facilities' compliance with the Convention. Therefore, ship recycling facilities can be subject to powers such as inspection and auditing.

Authorisation is limited to a maximum of five years and must be renewed.

Emergencies, environment, safety, training and reporting

The Convention contains a number of regulations that require recycling facilities to protect human health and safety and the environment. For example, facilities must establish procedures that prevent explosions, fires, dangerous atmospheres, spills and disease.⁹ There must be environmentally sound management of hazardous materials, including the appropriate identification, labelling, packaging and

³ See Annex, Appendix 4.

⁴ Regulation 8, Annex.

⁵ Regulation 8, Annex.

⁶ Regulation 8, Annex.

⁷ Article 6.

⁸ Regulation 16, Annex.

⁹ Regulation 19, Annex.

removal of them to the maximum extent possible prior to cutting.¹⁰ There must be appropriate worker training¹¹ and an emergency preparedness response plan.¹²

In meeting these requirements, the facility must observe relevant guidelines issued by the IMO.

Incidents and accidents, occupational diseases and chronic effects must be reported by the recycling facility to the State.

Ship recycling plan

A ship recycling facility must draw up a ship recycling plan for each ship it intends to recycle and have this plan approved (either explicitly or tacitly) by the relevant State authority. State authorities must provide their determination expeditiously, within 14 days of receipt. If the authorities does not respond within this time period, the plan can be taken to have been approved.¹³

The ship recycling plan is developed and implemented by the facility. The plan specifies the plan in which a ship will be recycled based on its Inventory of Hazardous Materials. The plan must demonstrate compliance with the convention, providing details relating to workers' safety, health and training (including maintenance and monitoring of Safe-for-entry, safe-for-hot work conditions) measures to protect the environment, the roles and responsibilities of personnel, emergency procedures and response, systems for monitoring performance, reporting incidents and record keeping.¹⁴

A ship recycling facility can only accept ships that comply with and meet the requirements of the Hong Kong Convention – though the ship does not have to be flagged to a State Party.

If the ship recycling plan is approved, the ship must acquire an International Ready for Recycling Certificate from it's flag State authority, and facility must notify their State Party of the intention to commence recycling operations.¹⁵

Statement of completion

Once a ship has been successfully recycled, a statement of completion must be issued by the facility to the facility's State authority.¹⁶

¹⁰ Regulation 20, Annex.

¹¹ Regulation 22, Annex.

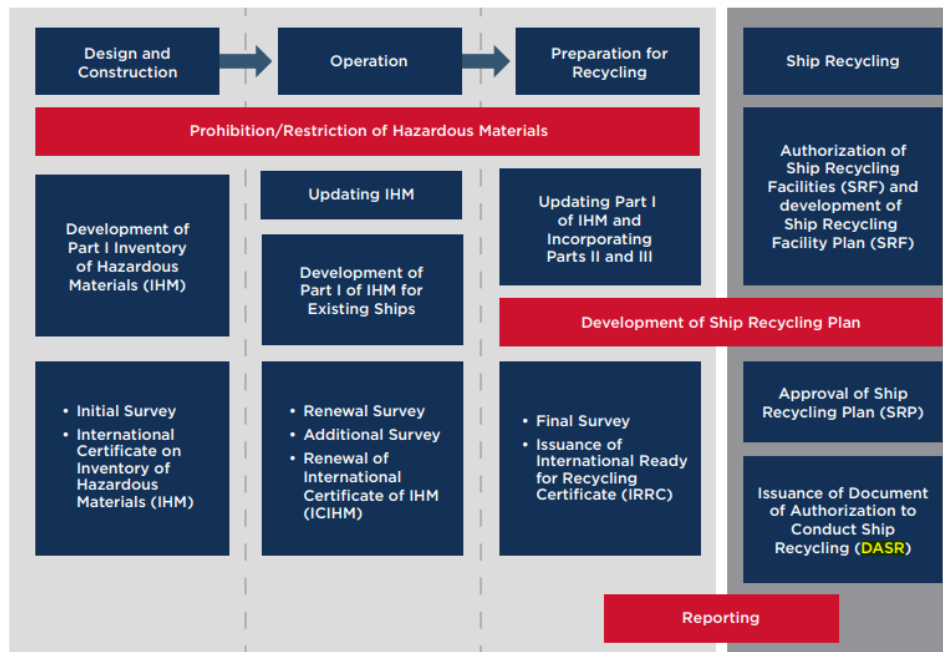
¹² Regulation 21, Annex.

¹³ Regulation 9, Annex.

¹⁴ Regulation 18, Annex.

¹⁵ Regulation 24, Annex; Appendix 6, Annex.

¹⁶ Appendix 7, Annex.

Figure 1: High level outline of the Hong Kong Convention requirements for ships

[Debrief: Preparing for compliance with ship recycling requirements](#)

State Parties

The flag State

If a State joins the Convention, the State is responsible for the survey and certification of ships flagged to their State.

The State must survey their ships to verify compliance with the Convention and the ships information in its Inventory of Hazardous materials, prior to issuing an International Certificate on Inventory of Hazardous Materials. The certificate can only be valid for a maximum of five years, requiring the State to renew the certificate after completing a renewal survey.

If a ship undergoes repairs and requests an additional survey to ensure their Inventory has been properly updated, the State must undertake this additional survey. The State must also conduct a survey of a ship prior to issuing a ready for recycling certificate.

The flag State can seek the agreement from another State party to conduct the requisite survey and certification.¹⁷

The flag State must ensure that the Convention is implemented in law with appropriate sanctions, including with the necessary prohibitions and restrictions on the use and installation of hazardous materials.

The flag State must provide information to the IMO including a list of ships that have been issued an international ready for recycling certificate, violations of the Convention and any actions taken against the ship.¹⁸

The recycling facility State

If a State joins the Convention, the State is responsible for the authorisation of recycling facilities located in their territory. They are also responsible for approving all ship recycling operations.

¹⁷ Regulation 12, Annex.

¹⁸ Article 12.

To authorise a facility, the State must undertake an inspection, and verify information required by the Convention. The authorisation must only be valid for up to five years, and involve a regime of inspection and monitoring to ensure compliance. The State is responsible for a system of renewal of authorisations.

The State must also approve every ship recycling plan before recycling commences on a ship. This approval can be explicit or tacit. States have 14 days before submitted plans are assumed approved. Once a ship has been successfully recycled, the facility provides the State with a copy of the recycling completion statement, which the State must pass on to the flag State authorities.

The recycling State must investigate issues at a recycling facility in their territory at the request of other State parties and provide information in relation to the investigation.

The recycling State must provide information to the IMO including a list of recycling facilities authorised, violations of the Convention and any actions taken against the facility.¹⁹

All other State parties

All State parties owe an obligation to detect and enforce violations of the Convention. Each party may subject a ship of another State party to inspection in a port or offshore terminal for the presence of either an International Certificate on Inventory of Hazardous Materials, or an International Ready for Recycling Certificate. If there is no certificate or there are clear grounds for believing the Convention is not being complied with a detailed inspection may be undertaken. The results of the investigation must be sent to the flag State which is obligated to take appropriate action.

All State parties owe an obligation to provide each other with technical assistance to those States that request it. Including assistance with the training of personnel and the availability of required equipment.

All States must also ensure that their national laws prohibit and restrict the installation and use of hazardous materials in their ship yards and ports.

¹⁹ Article 12.

4. Feedback sought

The Department is seeking to develop an initial understanding informed by stakeholder feedback as to:

- how the Hong Kong Convention could be applied in the Australian context.
- how accession will impact stakeholders.
- the current global capacity to meet demand for ship recycling
- if accession would support the emerging ship and offshore facility recycling sector and the costs/benefits it would offer Australia.

Specific comments would be appreciated on questions below but stakeholders are welcome to provide any feedback relevant to the Australian Government's consideration of potential accession to the Hong Kong Convention through HongKong@infrastructure.gov.au by 5pm (AEST) 17 March 2023.

After careful consideration of submissions made, the Department may proceed with a Regulatory Impact Assessment for review by the Office of Impact Assessment. The Regulatory Impact Assessment may involve further consultation and will form the basis for the decision whether the Department will pursue accession.

Please share:

1. Experiences recycling vessels, including any challenges you have experienced in having your vessel recycled domestically or overseas.
2. Factors that drive decisions to scrap vessels.
3. Views on the existing ship recycling framework under the Basel Convention.
4. Views on the Hong Kong Convention framework, including benefits and concerns.
5. Experiences and information relating to market pressure to be Hong Kong Convention compliant.
6. Views on the EU approach to ship recycling (ie with a dual regulation approach under the Basel Convention and Hong Kong).
7. Views on the potential for a ship recycling industry to be established and service Australia

Appendix A – Ratification status

The Hong Kong Convention will enter into force 24 months after the following conditions are met:

1. it has been ratified by 15 States;
2. those 15 States represent not less than 40 per cent of the world’s global merchant shipping by gross tonnage (GT);
3. the combined maximum annual ship recycling volume undertaken by those States during the preceding 10 years constitutes not less than 3 per cent of their combined global merchant shipping tonnage.

The first condition has been met with 17 states having become parties to the Hong Kong Convention, including Belgium, Congo, Croatia, Denmark, Estonia, France, Germany, Ghana, India, Japan, Malta, Norway, Panama, Serbia, Spain, The Netherlands, and Türkiye.²⁰

These states, however, only represent 29.77 per cent of global shipping GT falling short of the second condition. Ratification by a State such as Liberia (11.6 per cent of the world’s fleet) or the Marshall Islands (11.3 per cent of the world’s fleet) would be enough to meet the 40 per cent target.

To meet the third condition, an additional recycling capacity of 2.1 million GT is needed. This can only be provided by the accession of a major ship recycling country: Bangladesh (9.9 million GT), Pakistan (5.7 million GT) or China (8.2 million GT).

All three States are in different positions in regards to potential ratification:

- China currently bans the importation of a large number of hazardous waste materials (including plastics), which has resulted in a ban on recycling foreign flagged ships and the closure of a number of Chinese ship recycling facilities. It may seek to ratify the Hong Kong Convention once this ban has lifted.
- The IMO is continuing to work with Pakistan on adopting the Hong Kong Convention and has held several workshops in the country on this issue. It is understood that Pakistan is not in a position to ratify at this stage due to the need for significant investment in ship recycling facilities in order to meet the Hong Kong Convention requirements.
- Bangladesh has recently set up a new ship recycling law that indicates the intention of the country to ratify the Hong Kong Convention by 2023. This is the result of extensive support from Japan and Norway to upgrade recycling infrastructure and develop the necessary regulatory framework over recent years.

²⁰ As at 11 March 2022.