



Australian
BORDER FORCE

Australian Customs Notice

No. 2024/38

Vessels undertaking voyages to Ashmore and Cartier Islands – reporting requirements and eligibility for duty-free ship's stores

The Australian Border Force (ABF) has observed an emerging practice, in Australia's northern maritime regions, that involves commercial ship operators travelling from mainland Australia to Australia's external territory of Ashmore and Cartier Islands and, prior to travelling to the external territory, loading stores onto their vessel (such as bunker fuel, consumable food and drink etc.) duty free as ship's stores under Part VII of the *Customs Act 1901* (Customs Act).

The purpose of this Notice is to assist Industry to comply with their obligations under the Customs Act in relation to voyages that involve travel to or from the external territory of Ashmore and Cartier Islands.

Customs legislation and Australia's external territories

The Customs Act does not apply to Australia's external territories, though modified requirements under customs legislation may separately apply to specific external territories under other Australian laws (e.g. the *Norfolk Island Customs Ordinance 2016*). This means that, although Australia's external territories form part of the Commonwealth of Australia, vessel movements between mainland Australia and Australia's external territories are not considered domestic in nature for Customs Act purposes, and as such, may be subject to customs controls.

Unlike some of Australia's external territories, such as Christmas Island, Cocos (Keeling) Islands and Norfolk Island, the external territory of Ashmore and Cartier Islands is uninhabited, and as a result, is not a 'place outside Australia' as defined in section 4 of the Customs Act. The uninhabited status of Ashmore and Cartier Islands impacts the application of Customs Act provisions which refer to a 'place outside Australia', including the ship's stores regime under Part VII of the Customs Act.

Loading and consumption of ship's stores

Customs requirements for reporting and duty liability for ship's stores is outlined in Part VII of the Customs Act. Ships that undertake an 'international voyage', within the meaning of section 130C of the Customs Act, may be eligible to load duty free 'ship's stores' for, and consume 'ship's stores' on that international voyage.

Section 130C defines an 'international voyage' as a voyage, whether direct or indirect, between a place in 'Australia' and a 'place outside Australia'. Importantly, it should be noted that:

- Section 4 of the Customs Act excludes Australia's external territories from being part of 'Australia' for customs purposes. This means that, in principle, a journey between a place in Australia and one of Australia's external territories could form part of an international voyage for ship's stores purposes.

- However, section 4 of the Customs Act also explicitly states that a 'place outside Australia' does not include a reef or an uninhabited island outside Australia. This means that external territories that are reefs or uninhabited islands are not a 'place outside Australia' for ship's stores purposes.

The external territory of Ashmore and Cartier Islands is uninhabited. A vessel travelling to or from Ashmore and Cartier Islands – that is not part of a broader journey to or from an inhabited 'place outside Australia' – is therefore not undertaking an international voyage for ship's stores purposes under Part VII of the Customs Act. Vessels are not entitled to load or use duty free ship's stores on such voyages, as they are not international voyages for the purposes of Part VII of the Customs Act.

A journey from mainland Australia to or from Ashmore and Cartier Island, as an intermediary stop to or from an inhabited place outside Australia (e.g. a port in a foreign country, or an inhabited external territory) may be considered on an *indirect* international voyage to or from a 'place outside Australia'. Vessels may be entitled to load or use duty free ship's stores on such voyages, which are international voyages for the purposes of Part VII of the Customs Act.

Other Customs Act provisions referring to a 'place outside Australia'

Some reporting requirements under the Customs Act apply to vessels that arrive from, or depart to, a 'place outside Australia'. As reefs and uninhabited islands are excluded from this definition, this means that vessels travelling to or from Ashmore and Cartier Islands – that are not undertaking a broader journey to an inhabited 'place outside Australia' – are not required to complete some reporting requirements under the Customs Act. This includes, for example, impending arrival reports (section 64), actual arrival reports (section 64AA), departing persons reports (section 106A – 106D), cargo reports (section 64AB) or stores and prohibited goods reports (section 64AAA).

Importation and entry of vessels

The definition of an 'international voyage' under section 130C only applies to the ship's stores regime under Part VII of the Customs Act.

In line with section 68 of the Customs Act, the ABF requires a vessel to be entered for home consumption if it is 'imported' into Australia.

There is no legislated definition of 'import' or 'importation' under the Customs Act, with its meaning established over time through case law. Importantly, in contrast to the ship's stores regime, customs legislation does not draw a distinction between uninhabited external territories such as Ashmore and Cartier Islands and Australia's other external territories, for the purposes of determining if goods (including vessels) are imported in Australia.

The ABF continues to treat any ship's journey to or from Ashmore and Cartier Islands, for importation purposes, on the same basis as journeys undertaken to Australia's other external territories. Depending on the individual facts and circumstances of the vessel, its activities while in Australia and/or its planned or actual itinerary, this may permit the vessel to travel to, from or through Ashmore and Cartier Islands without requiring the entry of the vessel in Australia, even though the Customs Act may separately require duties to be paid for stores loaded in mainland Australia (and/or consumed on board) for that same voyage.

[Signed]

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17 October 2024