

The KordaMentha logo is located in the top left corner. It consists of the company name 'KordaMentha' in a white, sans-serif font, enclosed within a white rectangular border. The background of the entire page is a dark blue-grey color with a subtle pattern of lighter blue-grey squares of varying sizes, creating a textured, mosaic-like effect.

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Tipping off: what the changes mean for your business

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Tipping off changes

Section 123 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) previously prohibited disclosure of information (or ‘tipping off’) from which it could be inferred that a reporting entity is to, or has, lodged a suspicious matter report (SMR) with AUSTRAC.

From 31 March 2025, changes to this prohibition have been made as part of the broader reforms to the AML/CTF Act.

What is tipping off?

‘Tipping off’ now involves the disclosure of certain types of information to another person, where it would or could reasonably be expected to prejudice an investigation of an offence or investigation of a proceeds of crime matter under Commonwealth, State or Territory laws.

Tipping off remains a criminal offence with a maximum penalty of imprisonment for two years or 120 penalty units, or both.



Why does tipping off exist

Tipping off plays an important role in ensuring an effective framework exists that supports the reporting by businesses of intelligence to AUSTRAC. That is because it:

- protects the privacy and reputation of customers, including both suspected perpetrators and victims
- ensures the identity of the person submitting an SMR remains confidential, and
- ensures that investigations are not affected by criminals hiding their activities and behaviours when they become aware that their activities led to suspicions.



Broadly there are two types of information that cannot be disclosed as part of tipping off:

SMR information, including:

- information that suggests an SMR was submitted, or that a requirement to submit an SMR has occurred
- any report made or prepared for the purposes of meeting SMR obligations
- any document purporting to set out information contained in an SMR.

Information relating to notices given under sections 49 and 49B of the AML/CTF Act (49 or 49B notices), whereby a business or individual:

- is required to give information or produce a document in response to a notice
- was previously required to have given information or produced a document in response to a notice.

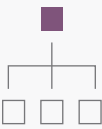


What does prejudicing an investigation mean?

Information must not be disclosed if it would or could reasonably be expected to prejudice an investigation. AUSTRAC guidance suggests that the meaning of prejudicing an investigation is doing something that could negatively affect an investigation. The inclusion of ‘could’ means that you don’t have to know that an investigation may be prejudiced.

The type of information that is disclosed, who the disclosure is made to and how and when it is made are all factors that determine whether a disclosure could reasonably be expected to prejudice an investigation.

Typical disclosures that involve tipping off could be telling a customer or associate that you have submitted an SMR to AUSTRAC or that you have formed a suspicion, disclosing information publicly or to someone who may share it more broadly



Who does tipping off apply to?

The tipping offence applies to all current and former reporting entities, officers, employees or agents of a reporting entity and any person who is or were required to give information or produce documents under 49 or 49B notices.



What disclosures may fall outside the scope of tipping off?

Generally, tipping off would not include disclosures:

- to Australian law enforcement, intelligence or regulatory agencies.
- made to assist a person who is not the subject of suspicion but may be affected by the conduct reported in an SMR, for example, due to a scam or identity fraud.
- required by law, for example disclosures relating to scam prevention or state-based gambling;
- to manage ML/TF risk and meet AML/CTF obligations, for example disclosures within a business’s corporate group (including those that are not reporting entities and/or based overseas) or as part of an engagement of an advisory business tasked with supporting you meet your AML/CTF requirements (for example, remediation and independent evaluations);
- enquiring with a customer as part of your enhanced customer due diligence; or
- undertaking due diligence in the process of a merger or acquisition.

Following the making of future regulations, an exception to the tipping off offence for disclosures of Information between reporting entities (including those not part of the same corporate group) for the purposes of detecting, deterring or disrupting money laundering, financing of terrorism, proliferation financing, or other serious crimes will exist.

These regulations are to prescribe conditions and controls for reporting entities entering into such information sharing arrangements. AUSTRAC will be providing further guidance to assist businesses once these regulations have been developed.

An exception also exists for disclosures made by lawyers and accountants that are reporting entities and that are made in good faith to dissuade a customer from engaging in conduct that constitutes an offence.



How can the risk of tipping off be reduced

The risk of tipping off can be reduced by:

- updating policies contained in your AML/CTF Program relating to tipping off to reflect the changes and ensuring governance arrangements relating to the sharing and safeguarding of information are clear
- updating and undertaking staff training and guidance materials to ensure staff understand the changes, how to prevent tipping off and when disclosures can be made.

More practically, businesses can:

- implement controls restricting access to information to those with a genuine need to know, including third party service providers with access to internal systems
- if required, disclose anonymised information instead of specific customer or transaction information when communicating trends and insights
- rely on IT security features such as passwords for documents or files and destroy physical documents (subject to record-keeping requirements)
- manage their employee risk through due diligence and training.

Dealing with customers heightens the risk of tipping off, particularly when applying enhanced customer due diligence (ECDD) that involves obtaining information directly from the customer or when ending a business relationship.

Policies and staff training should emphasise the heightened risk and clearly outline the importance that the forming of a suspicion is not disclosed and the alternative explanations that can be provided in a given circumstance.

For example, the performance of ECDD or termination of a business relationship may be due to AML/CTF compliance, policy requirements relating to ongoing customer due diligence or simply where a customer falls outside of the entity's risk appetite. In such scenarios, records should be made and kept that clearly outline what is communicated to a customer.



Key contacts



Alice Saveneh-Murray | Partner

Alice is an experienced leader and trusted advisor to the financial crime risk community. Alice brings deep subject matter expertise and innovative strategies to support client engagements, Boards, and a wide range of industry initiatives. Drawing on her experience in both industry and consulting, she is known for her ability to solve complex regulatory challenges.

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Rachel Waldren | Partner

Rachel has more than 30 years’ experience in both the public and private sectors and has a proven reputation as a leader in the Financial Crime Risk, Compliance, Operational and Regulatory areas. She has worked in major banks as the Global Head of Financial Crime and Anti Money Laundering and Counter Terrorism Financing Compliance Officer. Rachel has been appointed as an AML/CFT expert in high-profile Australian litigation and Royal Commissions, and as an AML/CFT Independent Auditor.

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Grace Mason | Partner

Grace has extensive financial crime experience and has been responsible for driving transformational change and navigating complexity in regulatory, intelligence and policy environments. With over a decade of experience at AUSTRAC, working across AML/CTF regulatory, financial crime and National Intelligence Community capabilities, Grace is a strategic thinker with strengths in communication, engagement, and collaboration.

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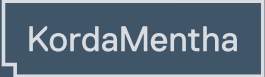


Richard Lee | Executive Director

Richard is a pragmatic and insightful leader, with a broad career in financial crime prevention and detection. He has over 30 years’ experience in financial crime regulation and investigation, including executive leadership roles with Australia’s AML/CTF regulator, AUSTRAC. He has led teams responsible for enforcement, supervision, and education of a broad range of industry sectors, represented Australia at major international AML forums, and has acted as a financial crime expert on Asia Pacific Group mutual evaluations of member countries.

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