

**Bali Process Workshop
on
Enabling Electronic
Exchange of Lost and
Stolen
Travel Document
Information**

Resource Information

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1. A COMMON MULTILATERAL FRAMEWORK FOR INFORMATION SHARING

Bilateral agreements (at a 'Government to Government' or agency level, or both) can be established to authorise and regulate the electronic sharing of information about lost, stolen, invalid and non-genuine travel documents.

Such agreements can also enhance political and public confidence that such electronic sharing is taking place in a responsible and properly controlled manner.

If, however, larger groups of countries wish to cooperate in this way the bilateral approach will rapidly become impractical and inefficient. If, for example, 8 countries wished to share information among themselves in a particular system, a total of at least 56 specific bilateral agreements would be required – possibly more.

As part of the development of the RMAL system, consideration is now being given to the development of a common multilateral framework. This framework has sometimes been referred to as a set of 'club rules'.

The concept is that:

- A common framework would be established covering all relevant and necessary information sharing issues, and the minimum standards that all participating countries are required/agree to met
- When a new country joined the system they would 'sign up' to the common framework and separate bilateral arrangements with all of the existing members would not be required.

Further work is required on the content of such common frameworks and how they might work in practice.

2. RESOURCE MATERIALS

Legislation

- Sections 35 and 36 of the New Zealand Passports Act, 1995
- Regulation XX of the Australian Migration Act

These provisions authorise (and set out the conditions that will apply to) the disclosure and use of travel document information

Government to Government Agreements/MoUs

- MoU between the Governments of the United States and Australia for the Sharing of Information on Lost and Stolen Passports.

Includes sections on:

- *Purpose*
 - *Responsible Agencies*
 - *Program Commitments*
 - *Technical Commitments*
 - *Conditions of Use*
 - *Security/Safeguards*
 - *Resolution of Differences*
 - *Status of Memorandum*
- Arrangement between the Governments of Australia and New Zealand on Overarching Principles for the Exchange of Information on Travel Documents and Visas.

Includes sections on:

- *The context and purpose of the arrangement*
- *How information will be disclosed*
- *The establishment of agency level MoUs for the exchange of particular information*
- *Privacy and sovereignty issues*
- *On-going cooperation*
- *Status of arrangement*

Agency Level MoUs

- MoU between the Australian Department of Foreign Affairs and Trade and the New Zealand Department of Labour for the provision of Australian Passport Information.

Includes sections on:

- *Principles*
- *Responsible Agencies*

- *Purpose*
- *The nature of information to be provided (including information quality)*
- *Disclosure and use of information*
- *Arrangements for dealing with situations where there is a 'hit' against information which has been disclosed*
- *Contact arrangements*
- *Liability and compensation to passengers*
- *Automated data sharing arrangements*

3. ESTABLISHING EFFECTIVE INTERNATIONAL ELECTRONIC SHARING OF INFORMATION ON LOST, STOLEN, INVALID, AND NON-GENUINE TRAVEL DOCUMENTS

Experience in different countries suggests that action is required in a number of areas to establish effective arrangements to share information with other countries on lost, stolen, invalid and non-genuine travel documents.

This paper sets out a possible framework (including relevant questions) for considering this issue.

The framework is not specific to any particular information sharing system such as RMAL, EITS, or the system operated by INTERPOL. Such systems will have their own specific requirements.

Responsibility and Coordination

- What agencies need to be involved and consulted in the sharing process (e.g. agencies responsible for issuing travel documents, and agencies with border management responsibilities)?
- Are formal arrangements required between such agencies?

Domestic Legal Issues

- Does legal authority exist for information to be shared – and shared in electronic form? Are there legal conditions that must be met?
- Are there privacy or data/system security standards or requirements that must be met?

Data availability and IT system capacity

- Is information stored electronically about:
 - Valid travel documents issued?; or
 - Lost, stolen, invalid, or non-genuine travel documents?
- Can this information be:
 - Extracted and supplied electronically from time to time in a standard format?; and/or
 - Made available on a real time basis for queries from other systems?
- What data and system security arrangements will/can apply to these processes?

International agreements and arrangements

- Will 'Government to Government' or agency specific agreements (or both) be required to authorise and regulate the information sharing process?

- If so, what should be discussed and included in such agreements?

Support arrangements

- What facilities (e.g. 24/7 response centres) need to be established or used to deal with situations where there is a 'hit' against information which has been supplied?
- What discussions need to take place with other countries about how such situations will be dealt with?
- How will the facilities be staffed
- How will staff be trained and supported?

**4. Memorandum of Understanding
for the sharing of
Passport Information
between the
Government of [country name]
and the
Government of [country name]**

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Part 1 – Principles

1. The Parties recognize that
 - a. the urgent problems of border security arising from international terrorism, illegal immigration, and other serious forms of international crime demonstrate the need for progress in co-operation among border protection, immigration, passports, and diplomatic agencies;
 - b. entering a nation's territories should be made easier for legitimate tourists, students, and business travelers, while making it more difficult to enter the territories illegally;
 - c. border control, immigration, passports, and diplomatic agencies must be able to obtain reliable data swiftly from their counterparts abroad to verify authenticity and to identify Travel Documents that are no longer valid;
 - d. nothing in these arrangements will affect the obligations of each Government to comply with laws within its jurisdiction affecting the protection of individual privacy and that observance of these privacy principles is essential to maintain the public's confidence in these arrangements; and
 - e. nothing in the way of these arrangements are designed or operated should affect the essential sovereignty of each Party to determine who is to enter their respective country and on what basis.

Part 2 – Responsible Agencies

2. For [country name], this Memorandum will be implemented by [passport authority name], which has responsibility for the collection, use, disclosure, storage and data security of Passport Information and [border control authority name], which has responsibility for determining who is to enter its country and on what basis.
3. For [country name], this Memorandum will be implemented by [passport authority name], which has responsibility for the collection, use, disclosure, storage and data security of Passport Information and [border control authority name], which has responsibility for determining who is to enter its country and on what basis.

Part 3 – Purpose of disclosure

4. The purposes of the disclosure of any Passport Information by a country's passport authority to the other country's border control authority are to inform that border control authority of the status of a Travel Document, in order to:
 - a. enable the detection and, if necessary, the prevention of, and
 - b. assist in any law enforcement action in relation to;the use of any Travel Document which is lost, stolen or otherwise invalid

Part 4 – Information

5. Each passport authority will disclose to the other country's border control authority the Minimum Necessary Information.

6. Each passport authority may disclose to the other country's border control authority any further Passport Information in accordance with the Joint Process Arrangements.
7. Each passport authority will ensure that the Passport Information disclosed is accurate, up to date and complete as is reasonably necessary to meet the terms of this Memorandum.
8. If a passport authority becomes aware of any significant fault or discrepancy in the information being disclosed to the other country's border control authority, the passport authority will notify the other country's border control authority as soon as possible of such fault or discrepancy.

Part 5 – Information management principles

Use

9. The passport authority will provide and other country's border control authority will use the Passport Information:
 - a. for the Purpose set out in Part 3; and
 - b. in the manner set out in the Automated Data Sharing Specification and the Joint Process Arrangements.

Disclosure

10. The border control authority will not disclose any Passport Information from the other country's passport authority unless it is:
 - a. to an air or sea Carrier,
 - i. to establish the validity and authenticity of a Travel Document that is presented to the Carrier; and
 - ii. restricted to the information contained on the data page of the Australian Travel Document; or
 - b. in accordance with the Joint Process Arrangements; or
 - c. required under the laws applying in the border control authority's jurisdiction.
11. If a border control authority is required, in accordance with the laws, rules or obligations applying in its jurisdiction, to disclose the other country's Passport Information, the border control authority's Senior Officer will advise the Senior Officer of the other country prior to (or if not possible, immediately after) such disclosure, if the border control authority's Senior Officer assesses that such disclosure would adversely affect the other country's passport authority. The Parties acknowledge that disclosures to Parliament or in court proceedings should be advised to the other Party.

Storage and security

12. The Parties will protect information disclosed under this arrangement against unauthorised access, use, or disclosure, and against other misuse. The level of protection provided will be equivalent to the protection provided for comparable information that is generated and held by agencies in the country concerned.

Part 6 - Alert / Exception management arrangements

Joint process arrangements

13. If the Travel Document is identified as lost, stolen, or otherwise invalid, the border control authority commits to notify the other country's passport authority of the match as soon as practical. The respective Watch Offices will then take action as soon as practical, in accordance with the Joint Process Arrangements and with the intention that passengers may be dealt with before embarkation.
14. It is expected that the Joint Process Arrangements will be amended from time to time. These amendments will be agreed between the Senior Officials.
15. These Joint Process Arrangements will address operational procedures for:
 - a. the passport authority to advise on the validity and authenticity of Travel Documents; and
 - b. the border control authority to determine whether the bearer of a Travel Document may enter or transit that authority's jurisdiction.

Contact arrangements

16. The passport authority will operate an alert / exception management facility to provide guidance to the other country's border control authority on the validity and authenticity of Travel Documents in accordance with the terms of this Memorandum.
17. The border control authority will operate an alert / exception management facility to ensure other country's passport authority has been notified that a Travel Document has been identified as lost, stolen or otherwise invalid and to take further action in accordance with the Joint Process Arrangements.
18. The Parties will operate their respective alert / exception management facilities 7 days a week and 24 hours a day. Contact details and other contact arrangements are set out in the Joint Process Arrangements.

Liability / Compensation to passenger

19. The Parties acknowledge the possibility that legal claims might be made against them by third parties in respect of the disclosure and use of the Passport Information in accordance with this Memorandum.
20. The Parties accept the principle that each party should be responsible for their role in the acts or omissions that give rise to such claims. Each Party undertakes to consult, if requested by the other Party, in respect of any particular claim that may arise.

Part 7 - Automated data sharing arrangements

21. The Parties will ensure that data exchanges take place in the manner specified in the Automated Data Sharing Arrangements.
22. Border control authorities will respond promptly to any requests for information from the other country's passport authority about the nature or operation of arrangements that have been made in relation to storage and data security under this Memorandum.

Part 8 – Administration and miscellaneous

Status of this Memorandum

23. This Memorandum will not be governed by international law, will not create any legally enforceable rights or obligations and does not create or confer any right or benefit on any person or party, private or public.
24. The provisions of this Memorandum do not prevent either Party from cooperating or granting assistance in accordance with their national laws or international treaties and agreements such as the *Convention on International Civil Aviation* or agreements for bilateral mutual assistance in criminal matters.

Periodic Reviews

25. The Parties will undertake periodic reviews of the operation and terms of this Memorandum and other practical systems operational matters.

Amendment

26. No variation to this Memorandum will have effect unless it is in writing and signed on behalf of both Parties. The Senior Officers may agree to amendments to the Joint Process Arrangements.

Commencement, termination and suspension

27. This Memorandum will come into effect on a date to be agreed by the Senior Officers.
28. The Memorandum may be terminated by any Party with effect six months after notice is given to the other Party.
29. A Party may suspend its commitments to disclose its Passport Information, with effect immediately after notice is given to the other Party, if it is not satisfied with the protection of that information in accordance with:
 - a. the law of the other Party, or
 - b. the storage and data security safeguards obligations in the Automated Data Sharing Arrangements.
30. Wherever possible, such action will only be taken after the passport authority has:
 - a. drawn the issues which lead to the belief that suspension action may be necessary and appropriate to the attention of the other country's border control authority;
 - b. provided opportunities for consultation to take place on those issues; and
 - c. considered the results of that consultation.
31. On termination of this Memorandum, the border control authority will account for all the other country's Passport Information.

32. In the event that the border control authority is required by law to retain any of the other country's Passport Information, border control authority will use its best endeavours to uphold effectively the principles for fair handling of that information that are substantially similar to the Organization for Economic Co-Operation and Development's 1980 *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*.

Senior Officers

33. The Senior Officer responsible for implementing the obligations of the Government of [country name] under this Memorandum is the person holding the position of [title].

34. The Senior Officer responsible for implementing the obligations of the Government of [country name] under this Memorandum is the person holding the position of [title].

Definitions

35. In this Memorandum, unless the contrary intention appears:

- a. **Alert / Exception Management Arrangements** means arrangements to be followed in accordance with Part 5 – Information management principles.
- b. **Electronic Communication** means a communication of information in any form by means of guided and/or unguided electromagnetic energy.
- c. **Joint Process Arrangements** means those arrangements set out in the Annex.
- d. **Minimum Necessary Information** means the information:
 - i. contained on the data page of the Travel Document; and
 - ii. about the status of the Travel Document.
- e. **Passport Information** means any personal information collected for the purpose of performing functions in connection with the passport laws of the respective countries and which is disclosed under the terms of this Memorandum.
- f. **Automated Data Sharing Arrangements** means the arrangements referred to in [].
- g. **Senior Officers** means those officers specified in paragraphs 31 and 32.
- h. **Travel Document** means a passport or travel-related document issued under with the passport laws of the respective countries.

Signed at [place] on [date].

_____	_____
Name Title on behalf of [government of country],	Name Title on behalf of [government of country]

**Annex -
Joint Process Arrangements
under the
Memorandum of Understanding
for the sharing of
Passport Information
by the
Government of [country name]
to the
Government of [country name]**

Introduction

1. When a person presents a country's Travel Document to enter the other country, the airline is required to submit details of the document in accordance with that country's immigration requirements.
2. These Joint Process Arrangements set out the action the Parties may take once a Travel Document that is presented has been identified as lost, stolen, or otherwise invalid (that is, a **hit** which has been flagged in accordance with the Automated Data Sharing Arrangements).
3. Initially, the border control authority is provided with the Minimum Necessary Information in accordance with the Automated Data Sharing Arrangements.
4. The Memorandum provides that if there is a hit, the border control authority will notify the other country's passport authority of the document which has been identified and that the Watch Offices will operate 7 days and 24 hours a day.
5. This notification to passport authority's Watch Office will be accompanied by the following information:
 - a. name of passenger,
 - b. port of embarkation, and
 - c. airline, flight number and embarkation time.

Joint Processes – Context and Principles

6. The objectives of action by the Watch Offices are:
 - a. verifying that the hit did not occur as a result of data errors or data inaccuracies;
 - b. ensuring that genuine travelers are not unnecessarily hampered;
 - c. preventing the travel of those engaged in terrorism, illegal immigration and other serious forms of international crime; and
 - d. impounding lost or stolen or otherwise invalid Travel Documents in accordance with procedures to be developed.
7. Watch Offices will take this action as soon as practical, in accordance with the Joint Processes Procedures [and with the intention that passengers may be dealt with before embarkation.]

8. Border control authority Watch Office managers retain discretion to make decisions about whether to permit entry or to boarding. The Watch Office will not take action based on concerns about the status of the other country's Travel Document until that Watch Office has contacted the other country's passport authority Watch Office.
9. Passport authority Watch Office managers retain discretion to provide further information to establish the validity and authenticity of the Travel Document issued by that authority. This may include personal / biographic information or other related information. The Joint Processes Procedures may set out relevant supplementary information which ordinarily would be provided for managing different situations.
10. Border control authority Watch Office will report to the passport authority Watch Office any adverse action taken against the bearer of a Travel Document issued by that authority.

Joint Processes - Procedures

11. Watch Offices will establish operational procedures for managing different situations and, as a matter of good practice, courtesy and goodwill, advise their counterparts of its procedures.

Administration / Reviews

12. Senior Officers will be responsible for periodic reviews of the operation and terms of these Joint Process Arrangements and of any associated policy, systems and operational matters. The objective of these reviews is to ensure consistency of treatment of each Party's citizens and to improve operational procedures.
13. These reviews will take place at 3 month intervals in the first year of its implementation. After the first year, reviews may take place on an as needed basis, by mutual consent.

24/7 Contact arrangements

14. Contact arrangements are:

[Country name]

Passport authority Watch Office

Telephone:

Fax:

Email:

[Country name]

Passport authority Watch Office

Telephone:

Fax:

Email:

Border control authority Watch Office

Telephone:

Fax:

Email:

Fax:

Email:

Border control authority Watch Office

Telephone:

Key terms

15. Key terms are:

Joint Processes Procedures means the operational procedures referred to in Part 6 of the Memorandum.

Minimum Necessary Information means information:

- a. contained on the data page of the Travel Document; and
- b. about the status of the Travel Document.

Passport Information means any personal information collected for the purpose of performing functions in connection with the passport laws of the respective countries and which is disclosed under the terms of the Memorandum.

Automated Data Sharing Arrangements means the arrangements set out in [].

Senior Officers are, for [country name], [title] and, for [country name], [title].

Travel Document means a passport or travel-related document issued under with the passport laws of the respective countries.