



The Law Reform Commission
AN COIMISIÚN UM ATHCHÓIRIÚ AN DLI

REPORT

**eCONVEYANCING:
MODELLING OF THE IRISH
CONVEYANCING SYSTEM**

(LRC 79 – 2006)

IRELAND

**The Law Reform Commission
35-39 Shelbourne Road, Ballsbridge, Dublin 4**

© Copyright

The Law Reform Commission 2006
First Published April 2006

ISSN 1393 – 3132

THE LAW REFORM COMMISSION

Background

The Law Reform Commission is an independent statutory body whose main aim is to keep the law under review and to make practical proposals for its reform. It was established on 20 October 1975, pursuant to section 3 of the *Law Reform Commission Act 1975*.

The Commission's Second Programme for Law Reform, prepared in consultation with the Attorney General, was approved by the Government and copies were laid before both Houses of the Oireachtas in December 2000. The Commission also works on matters which are referred to it on occasion by the Attorney General under the terms of the Act.

To date the Commission has published 77 Reports containing proposals for reform of the law; eleven Working Papers; 38 Consultation Papers; a number of specialised Papers for limited circulation; An Examination of the Law of Bail; and 26 Annual Reports in accordance with section 6 of the 1975 Act. A full list of its publications is contained on the Commission's website at www.lawreform.ie.

Membership

The Law Reform Commission consists of a President, one full-time Commissioner and three part-time Commissioners.

The Commissioners at present are:

<i>President:</i>	The Hon Mrs Justice Catherine McGuinness, Supreme Court
<i>Full-time Commissioner:</i>	Patricia T. Rickard-Clarke, Solicitor
<i>Part-time Commissioner:</i>	Professor Finbarr McAuley
<i>Part-time Commissioner</i>	Marian Shanley, Solicitor
<i>Part-time Commissioner:</i>	Donal O'Donnell, Senior Counsel
<i>Secretary/Head of Administration</i>	John Quirke

Research Staff

<i>Director of Research:</i>	Raymond Byrne BCL, LL.M (NUI), Barrister-at-Law
<i>Legal Researchers:</i>	Claire Bruton LLB, LL.M (Lond), Barrister-at-Law Roberta Guiry BCL, LL.M (NUI) Orla Joyce BCL, LL.M (Cantab) Claire McAvinchey BCL, LL.M (Glasgow) Aoife McCarthy BCL, LL.M (NUI), Barrister-at-Law Richard McNamara BCL, LL.M (NUI) Jane Mulcahy BCL (Law and German), LL.M (NUI) Catherine Ellen O’Keeffe LLB, LL.M (NUI) Sinéad Ring BCL, LL.M (NUI) Aisling Wall BCL, LL.M (Cantab)

Administration Staff

<i>Project Manager:</i>	Pearse Rayel
<i>Executive Officer:</i>	Denis McKenna
<i>Legal Information Manager:</i>	Conor Kennedy BA, H Dip LIS
<i>Cataloguer:</i>	Eithne Boland BA (Hons), HDip Ed, HDip LIS
<i>Information Technology Officer:</i>	Liam Dargan
<i>Clerical Officer:</i>	Debbie Murray

Contact Details

Further information can be obtained from:

The Secretary

The Law Reform Commission
35-39 Shelbourne Road Ballsbridge Dublin 4

T: +353 1 637 7600
F: +353 1 637 7601

E: info@lawreform.ie
W: www.lawreform.ie

ACKNOWLEDGEMENTS

Project Board

The Commission would like to acknowledge the invaluable assistance provided by the members of the Commission's Project Board which oversaw the study on *Modelling of the Conveyancing System* that led to this Report. The members of the Project Board are:

Commissioner Patricia T. Rickard-Clarke
Professor J C W Wylie
Vivienne Bradley, Solicitor
Raymond Byrne, Director of Research
John Coyle, Director of Information Technology, Courts Service
Chris Hogan, Land Registry
Marjorie Murphy, Solicitor
John O'Sullivan, Information Systems Manager, Land Registry.

Legal Researcher to the Board

Aoife McCarthy

Working Group on Land Law and Conveyancing Law/eConveyancing

As Chapter 1 makes clear, this Report forms part of the Commission's eConveyancing Project, which began in 2003. The eConveyancing Project has three strands, the Substantive Law Strand, the Procedural Strand and the Administrative Strand. The Commission is also conscious of the enormous assistance provided to it by the members of the Commission's Working Group on Land Law and Conveyancing Law/eConveyancing. Where relevant, the Working Group formed sub-groups to deal with each strand. The Members of the Working Group are:

The Hon Mrs. Justice Catherine McGuinness, President of the Law Reform Commission
Commissioner Patricia T. Rickard-Clarke
Commissioner Marian Shanley
Professor J C W Wylie
Vivienne Bradley, Solicitor
Seamus Carroll, Department of Justice, Equality and Law Reform
John Coyle, Director of Information Technology, Courts Service
John Breslin, Barrister-at-Law
Patrick Fagan, Solicitor
Deirdre Fox, Solicitor
Brian Gallagher, Solicitor
Chris Hogan, Former Senior Deputy Registrar, Land Registry

Caroline Kelly, Barrister-at-Law
Frank Lanigan, Solicitor
Professor David Gwynn Morgan
Deirdre Morris, Solicitor
Marjorie Murphy, Solicitor
Tracey O’Keeffe, Department of Justice, Equality and Law Reform
John O’Sullivan, Information Systems Manager, Land Registry.
Doreen Shivnen, Barrister-at-Law
David Soden, Solicitor

Principal Legal Researcher to the Working Group

Professor J C W Wylie

Other Legal Researchers to the Working Group

Aoife McCarthy
Mary Townsend
Trevor Redmond

Full responsibility for the content of this Report lies with the Commission.

TABLE OF CONTENTS

INTRODUCTION		1
CHAPTER 1	THE eCONVEYANCING PROJECT	5
	A The 1987 request and subsequent reports	5
	B The Commission's Second Programme and review of land and conveyancing law	6
	C The eConveyancing Project	7
	D Substantive law strand and joint project with Department of Justice, Equality and Law Reform	9
	E Administrative and Procedural strands and the Modelling Report	12
CHAPTER 2	OVERVIEW OF THE MODELLING REPORT	17
	A Outline of the Modelling Report	17
	B The process model	17
	C Application of technology to conveyancing	18
	D Current state of readiness	20
	E The next stage and the roadmap	21
CHAPTER 3	THE COMMISSION'S OVERVIEW AND RECOMMENDATIONS	23
	A eConveyancing and government	23
	B Next stages	23
	C Improvements to the conveyancing process	24
	D Legislative change	24
	E Concluding comments	25
APPENDIX A	EXECUTIVE SUMMARY OF THE MODELLING REPORT	27
APPENDIX B	REPORT ON MODELLING OF THE IRISH CONVEYANCING SYSTEM BY BEARINGPOINT	48

INTRODUCTION

1. This Report sets out the views and recommendations of the Law Reform Commission on *Modelling of the Irish Conveyancing System* (the Modelling Report), a report submitted to the Commission by BearingPoint and published in full in CD-Rom format as Appendix B to this Report. The Executive Summary of the Modelling Report is published as an Appendix to the print version of this Report. The Modelling Report includes the first detailed ‘end-to-end’ process model of the current conveyancing process. In effect, this is the first detailed step-by-step analysis of the entire conveyancing transaction, taking account of the roles played in the process by the vendor and purchaser, estate agents, solicitors, financial institutions, local and planning authorities, the Land Registry and Registry of Deeds, the Courts Service, the Revenue Commissioners and others. The publication of the Modelling Report is also a significant landmark in the Commission’s eConveyancing Project, which began in 2003.

2. In 2001, under its *Second Programme of Law Reform 2000-2007*, the Commission began a review of its work to that point on the reform of land law and conveyancing law in Ireland. The Commission decided that it should build on this work by developing a comprehensive project aimed at the reform and modernisation of land law and conveyancing law, which would encompass the connected issues of the legal basis on which land is owned and sold, and which could ultimately lead to an on-line paperless eConveyancing process. In 2003, the Commission launched its eConveyancing Project, which involves three strands.

3. The first of these, the Substantive Law Strand, aimed to reform and modernise substantive land law and conveyancing law. In late 2003, the Substantive Law Strand was incorporated into a *Joint Project on Land Law and Conveyancing Statutes* between the Commission and the Department of Justice, Equality and Law Reform. This aimed to produce a comprehensive reform proposal by 2005. After extensive consultation with interested parties, this Joint Project resulted in the publication in July 2005 of the Commission’s

Report on Reform and Modernisation of Land Law and Conveyancing Law (LRC 74–2005). That Report contains a draft *Land and Conveyancing Bill* which would replace in a single legislative text the current law contained in over 150 pre-1922 Acts dating back to 1285. This is in line with the principles of regulatory reform set out in the government’s 2004 White Paper *Better Regulation*. The Commission’s draft Bill will form the basis for a Government *Land Law and Conveyancing Law Reform Bill* to be published in 2006.

4. The second and third strands of the eConveyancing Project involved an examination of the administrative and procedural aspects of conveyancing law. The Administrative Strand deals with the application of information technology to conveyancing transactions and of how various public and private bodies provide a service for, or information used in connection with, such transactions. The Procedural Strand subjects the conveyancing process to a step-by-step analysis with a view to enabling the process to be carried out electronically. The administrative and procedural strands involve considerable overlap.

5. With this in mind, in 2004, the Commission decided that a thorough analysis was required to prepare a detailed process model of the current conveyancing process and to examine the state of readiness of public and private bodies for the application of eCommerce to conveyancing. In 2005, the Commission received financial support for this study from the Information Society Fund and, after a public procurement tendering process, the Commission appointed BearingPoint to carry out the study on the basis of a fixed price contract and a specified time frame. The Modelling Report published with this Report is the result of that study, carried out over a 5 month period in the second half of 2005.

6. The Modelling Report contains 3 major elements. First, it contains the first detailed ‘end-to-end’ process model of the entire conveyancing process. It involves a graphic illustration of the process, which could form the basis for an eConveyancing model. The second element of the Modelling Report is a comprehensive overview and analysis of the role played by the many public and private stakeholders associated with the current conveyancing process and their technological state of readiness for eConveyancing. The third element consists of a vision and strategy for eConveyancing in Ireland

supported by conceptual operating models and an outline roadmap of how to achieve it.

7. In this Report, the Commission generally supports the content and analysis of the Modelling Report. It also acknowledges that if eConveyancing is to be a reality, it will not – and should not – happen overnight, but is itself a process of incremental development. But the Commission also agrees that there should be an early start to the next phase of this process to maintain the momentum that has been generated to date. Indeed, the Modelling Report has also highlighted important developments in parallel projects, such as the digital mapping of the State, and that other immediate time-saving benefits, such as standardised documentation and better communication between those involved in the process, can occur on the road to eConveyancing.

CHAPTER 1 THE eCONVEYANCING PROJECT

1.01 In this Chapter, the Commission describes how this Report fits into its wider eConveyancing Project. In 2001, the Commission began a review of its work to that point on the reform of land law and conveyancing law, which dated back to 1987. The Commission decided that it should build on this work by developing a comprehensive project. In 2003, the Commission launched its eConveyancing Project, aimed at the reform and modernisation of land law and conveyancing law, which would deal with the legal basis on which land is owned and under which it is sold, and which could ultimately lead to an on-line paperless eConveyancing process. The Project involves three strands: the Substantive Law Strand, the Administrative Strand and the Procedural Strand. The Modelling Report published with this Report is an important part of the Administrative and Procedural strands.

A The 1987 request and subsequent reports

1.02 In 1987, the Attorney General requested the Commission, in accordance with section 4(2)(c) of the *Law Reform Commission Act 1975*, to make proposals for ‘reform of conveyancing law and practice where this could lead to savings for house purchasers.’ Arising from this request, the Commission published 9 Reports between 1989 and 2000 on various aspects of land law and conveyancing law. These were:

- *Report on Land Law and Conveyancing Law: (1) General Proposals* (LRC 30-1989)
- *Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney* (LRC 31-1989)
- *Report on Land Law and Conveyancing Law: (3) The Passing of Risk from Vendor to Purchaser* (LRC 39-1991)
- *Report on Land Law and Conveyancing Law: (4) Service of Completion Notices* (LRC 40-1991)

- *Report on Land Law and Conveyancing Law: (5) Further General Proposals* (LRC 44-1992)
- *Report on Interests of Vendor and Purchaser in Land during the period between Contract and Completion* (LRC 49-1995)
- *Report on Land Law and Conveyancing Law; (6) Further General Proposals including the execution of deeds* (LRC 56-1998)
- *Report on Gazumping* (LRC 59-1999)
- *Report on the Rule against Perpetuities and Cognate Rules* (LRC 62-2000)

1.03 Some of these Reports have been implemented in legislation: for example, the *Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney* (LRC 31-1989) was implemented by the *Enduring Powers of Attorney Act 1996*. Others, such as the *Report on Gazumping* (LRC 59-1999), which did not recommend a legislative approach to this problem, have also been accepted in policy terms.¹ But a number of other Reports have not been implemented.

B The Commission's Second Programme and review of land and conveyancing law

1.04 In December 2000, the Government approved the Commission's *Second Programme of Law Reform 2000-2007*. Item 23 of the Second Programme states that the Commission 'will continue its general review of land and conveyancing law,' which had begun with the 1987 request from the Attorney General. Item 26 of the Second Programme states that the Commission will examine eCommerce, 'having regard to activities undertaken or to be undertaken by Government Departments.'

1.05 In 2001 and 2002, the Commission conducted a review of its work to that point on the reform of land law and conveyancing law,

¹ The Commission's *Report on Gazumping* (LRC 59-1999) recommended that this matter should be dealt with by way of public information and consumer education, rather than by way of legislation. This view has been generally accepted by relevant stakeholders, most recently in the *Report of the Auctioneering/Estate Agency Review Group* (July 2005). The Report also recommended the establishment of an Estate Agents Regulatory Authority, and this is likely to lead to legislative implementation in the near future.

while also continuing the work to which it was committed under the *Second Programme of Law Reform 2000-2007*. By 2002, the Commission had published a *Report on the Acquisition of Easements and Profits à Prendre by Prescription* (LRC 66-2002) and a *Report on Title by Adverse Possession of Land* (LRC 67-2002).

1.06 The Commission concluded that, while some of the recommendations in the Reports it had published up to then had been implemented in legislation, or where relevant as a matter of policy (for example in connection with gazumping), it should build on this work by developing a comprehensive project aimed at the reform and modernisation of land law and conveyancing law. This would encompass not merely the conveyancing process under which land is sold but also with the connected issue of the legal basis on which land is owned. It would also encompass an analysis of the pre-1922 legislative provisions that affect land ownership and conveyancing and examine current and planned arrangements in other jurisdictions.

C The eConveyancing Project

1.07 Arising from the review conducted in 2001 and 2002, the Commission established a Working Group on Land Law and launched its eConveyancing Project in January 2003. The Commission envisaged that the Project would have a defined timeframe of up to 4 years and that it would involve 3 strands.

1.08 The first, the Substantive Law Strand, aims to reform and modernise the substantive land law and conveyancing law, which is based on legislation contained in over 150 pre-1922 Acts dating back to 1285, and much of it based on feudal concepts of ownership and other legislative relics of a bygone age.

1.09 The second and third strands involved examining the administrative and procedural aspects of conveyancing law. The Administrative Strand deals with the application of information technology to conveyancing transactions and involves a study of how various public and private bodies provide a service for or information used in connection with such transactions. The Procedural Strand subjects the conveyancing process to a step-by-step analysis with a view to enabling the process to be carried out electronically.

1.10 Since the Commission's Second Programme of Law Reform committed it to examine eCommerce, the Commission concluded that

this project should encompass not only a comprehensive reform and modernisation of land law and conveyancing law, but should also have as its *ultimate* objective the move towards an on-line paperless conveyancing transaction model: hence the title eConveyancing Project. The Commission felt that addressing the issue of eConveyancing was particularly urgent given increased computerisation within Irish public bodies, such as the Land Registry's Electronic Access Service, and the completion of the Digital Map project. It also reflects developments in other jurisdictions, particularly Canada, New Zealand and England and Wales, where the move to an electronic form of conveyancing is significantly ahead of Ireland.

1.11 The reasons for this analysis, and these international developments, are straightforward. Even a cursory examination of the conveyancing process reveals that much of it involves the collection and evaluation of information about the property in question and persons who own some interest in it. What makes the process so complicated and lengthy is that the relevant information has to be obtained from a wide range of persons and bodies. Many of these bodies are public ones, such as the Land Registry, the Registry of Deeds, local authorities, the Revenue Commissioners and the Courts Service. Some, however, are private ones, such as estate agents, financial institutions, solicitors and surveyors. The process is further complicated because the way in which the relevant information is made available - and therefore the convenience and speed of access - varies enormously between these various bodies. In particular, the extent to which they have made use of computer technology differs greatly.

1.12 The eConveyancing Project is also a response to government policy as evidenced by the enactment of the *Electronic Commerce Act 2000* and the drive to implement its underlying philosophy. This is clearly outlined in the Government's Information Society Strategy, *New Connections* (2002), which states that: 'the key significance of the Information Society is that it makes possible *new connections* - connections that challenge traditional assumptions about what is possible and when it is possible. Networking technologies are presenting a new range of possibilities to complement the ways we traditionally interact and do business.'

D Substantive law strand and joint project with Department of Justice, Equality and Law Reform

1.13 Since the launch of its eConveyancing Project, the Commission has engaged in parallel progress on the 3 strands involved. But the Commission has also been quite deliberate in giving priority to the Substantive Law Strand, aimed at reform and modernisation of substantive land law and conveyancing law. This was based on a review of international experience, which showed that, if the substantive law was itself in need of reform and modernisation, this should happen first, before eConveyancing was introduced. The Commission was conscious of the need to have the horse in front of the cart.

1.14 Through its regular meetings with the Department of Justice, Equality and Law Reform, the Commission became aware that its eConveyancing Project was consistent with the Department's work on the reform of the law on registration of title, evident in the *Registration of Deeds and Title Bill 2004*, currently before the Oireachtas. The Commission was therefore especially pleased when the Department agreed in December 2003 to engage in a Joint Project on the substantive law strand.

1.15 In June 2004, the Minister for Justice, Equality and Law Reform publicly announced details of this *Joint Project on Land Law and Conveyancing Statutes* to update and modernise Irish land and conveyancing law. It was agreed that the Joint Project should be based on the following guiding principles:

- updating the law, to align it with changes in society;
- promoting simplification of the law and its language, to make it more easily understood and accessible;
- promoting simplification of the conveyancing process, in particular the procedures involved;
- facilitating extension of the registration of title system, with a view to promoting a system of title by registration;
- keeping in mind the overall aims of the eConveyancing Project and facilitating introduction of an eConveyancing system as soon as possible.

1.16 It is clear from these guiding principles that updating and simplifying land law and the conveyancing process would happen first, keeping in mind that it would facilitate the introduction of eConveyancing ‘as soon as possible.’

1.17 The Commission was grateful that the Department provided direct financial support for the Joint Project from 2004 through the appointment, after a public procurement procedure, of an external legal consultant, Professor John Wylie, Professor of Law at Cardiff University. Professor Wylie is a leading international authority on land law and conveyancing law, with a specialist knowledge of law and practice in Ireland.

1.18 The Commission also agreed with the Department that the Joint Project, which was to consist of 3 phases, should be completed over an agreed timetable running from June 2004 to July 2005. The Commission notes that the strict schedule envisaged at that time was fully met.

1.19 Phase 1 consisted of a *screening process* during which existing legislation was reviewed with a view to identifying statutes which could simply be repealed without replacement and those which needed to be replaced with modern provisions. By this stage, the Commission had also published a *Report on Land Law and Conveyancing Law: (7) Positive Covenants over Freehold Land and other Proposals* (LRC 70-2003) and a *Consultation Paper on Judgment Mortgages* (LRC CP 30-2004), which were also incorporated into the Joint Project. Phase 1 was completed with the publication in October 2004 of the Commission’s *Consultation Paper on the Reform and Modernisation of Land and Conveyancing Law* (LRC CP 34-2004). The Consultation Paper incorporated the recommendations in the relevant Reports previously published by the Commission, but it also extended to the entire range of substantive land law and conveyancing law with a view to comprehensive reform of the law.

1.20 Phase 2 involved an *extensive consultation process*, and included the Commission’s inaugural Annual Conference, *Modernising Irish Land and Conveyancing Law*, hosted by the Commission on 25 November 2004 at University College Dublin. The conference, attended by over 200 delegates, was addressed by international guest speakers and explored the reform proposals identified in the Consultation Paper. It also incorporated issues arising

from the Administrative and Procedural Strands of the wider eConveyancing Project, such as the modernisation of the Land Registry and international developments in eConveyancing.

1.21 Phase 3 involved publication of a Report by the Commission, to include *draft legislation* to give effect to the proposals for reform. This culminated in the Commission's *Report on Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74–2005), published in July 2005. This contains a draft *Land and Conveyancing Bill* of 133 sections, incorporating over 90 recommendations for reform, and intended to replace more than 150 pre-1922 statutes on land law and conveyancing, dating back as far as 1285. Although they remain on the statute book, many of these pre-1922 statutes have become either obsolete or superseded by more recent legal developments. Some key features of the draft Bill are:

- abolition of feudal land tenure (such as the fee tail estate which featured in Jane Austen's *Pride and Prejudice*) and its replacement with a more streamlined ownership model;
- simplification of the law of mortgages so that a mortgage will involve a simple charge as security on the land instead of a transfer of ownership to a financial institution;
- a new statutory scheme for trusts of land to replace the complex *Settled Land Acts* which were aimed principally at the large landed estates; and
- reform of conveyancing laws which, although used frequently by conveyancers in everyday property transactions, date back almost 150 years and are framed in unnecessarily archaic language.

1.22 The Commission's proposals are in line with international principles of regulatory reform, which were adopted in the government's 2004 White Paper *Better Regulation*.² They should also make everyday transactions less confusing and time-consuming than may be the case at present.

1.23 The publication of the Report in July 2005 marked the formal completion of the Joint Project. But following discussions between the Attorney General and the Minister for Justice, Equality

² See generally, www.betterregulation.ie

and Law Reform, the Commission was invited in December 2005 to continue work on finalising the draft Bill with a view to its publication as a government-sponsored Bill in 2006. The Commission was honoured to continue with the project to this further stage. The work to complete the drafting of the *Land and Conveyancing Law Reform Bill 2006* is at an advanced stage and will be completed in the first half of 2006.

E Administrative and Procedural strands and the Modelling Report

1.24 The Administrative and Procedural strands of the eConveyancing Project involve considerable overlap. With this in mind, in 2004 the Commission decided that a detailed study was required to prepare a detailed process model of the current conveyancing process and to examine the state of readiness of public and private bodies concerning the application of eCommerce to conveyancing.

1.25 In 2004, with the support and sponsorship of the Office of the Attorney General, the Commission submitted a formal application to the Information Society Fund for financial support for an eConveyancing study. The Commission's application was successful, and the Information Society Fund informed the Commission in December 2004 that €250,000 would be made available in 2005 for the study.

1.26 The Commission accepted that this study would require the involvement of specialist project management and consultant expertise. Therefore, in accordance with relevant EU Public Procurement requirements, in January 2005 the Commission placed a notice of the proposed study on the Irish Government's Public Procurement Portal, www.etenders.gov.ie and in the Supplement to the Official Journal of the European Union. Having received expressions of interest, the Commission issued an Invitation to Tender (ITT) to the bidders. The Commission then appointed an Evaluation Committee (consisting of Raymond Byrne, its Director of Research, John Coyle, Director of Information Technology, the Courts Service and John O'Sullivan, Information Systems Manager, the Land Registry) to assess the bids received in response to the ITT.

1.27 A detailed specification of the outputs required from the procurement was included in the ITT document, including:

- identification and documentation of the key processes and procedures associated with the conveyancing process in Ireland.
- identification and documentation of opportunities for simplification, consolidation and rationalisation of processes and procedures to facilitate the introduction of an eConveyancing process in the future.
- recording of enhancements, modifications and/or changes to the existing conveyancing process and procedures which would need to be supported by legislative or other similar change.
- provision of a full lifecycle view of the conveyancing process across process and procedural boundaries and specifically identifying opportunities for the removal of redundant or part redundant processes or procedures and the identification of opportunities for parallel processing.

1.28 The ITT document also stated that an important deliverable from the study would be detailed process, procedural and information flow descriptions (which would include sub-processes, illustrating, for example, the differences between sale and purchase, auction or private treaty, mortgage or cash purchase, freehold or leasehold title registered and unregistered title and others) covering the conveyancing system supported by appropriate system, information and dataflow diagrams.

1.29 It also indicated that the Information Society Fund had provided €250,000 for the study, that bidders should have regard to that funding and that the study was to be completed by the end of 2005.

1.30 The ITT document also included the evaluation and award criteria, with relevant marking scheme, which would be used in the evaluation of bids. These were:

- The bidder's understanding of, and overall approach to, the delivery of the required services, including an assessment of the approach to the provision of the services requested in the ITT document, the level, quality and extent of the deliverables which would be provided and an assessment of the appropriateness of the material which would result from the services (to which the ITT document allocated 400 marks).

- Cost (300 marks).
- An assessment of the skills, experience and expertise of the proposed personnel and the track record of the bidder organisation in delivering similar services (250 marks).
- The bidder's overall approach to the management of the assignment including an assessment of the processes and procedures which would be implemented by the bidder's team to ensure that all deliverables would be provided to a very high level of quality (50 marks).

1.31 The Commission's Evaluation Committee arranged for individual presentations to be made by the bidders and prepared an Evaluation Report for the Commission. On the basis of the criteria for awarding the contract as outlined in the ITT document, in July 2005 the Commission awarded the contract for the study to BearingPoint. The Commission was particularly impressed by the direct involvement in the successful bidder's project team of international expertise in process modeling directly related to conveyancing and eConveyancing. The Commission also informed all bidders of the outcome in writing, which included a comparative score analysis of their bid, and arranged individual briefing meetings for a number of them explaining the bid outcome.

1.32 In early August 2005, BearingPoint presented to the Commission a detailed project management plan for the study, which was to be carried out over a 5 month period from August to December 2005 and on the basis of the fixed price stated in their bid document, which had regard to the funding made available by the Information Society Fund. The study was supervised on behalf of the Commission by a Project Board, whose members are listed at the beginning of this Report.

1.33 The Commission would like to acknowledge the highly professional manner in which BearingPoint carried out the study, particularly bearing in mind the limited timeframe set for it. From a project management perspective, this included providing the Project Board with detailed weekly updates on its progress. It also involved arranging numerous bilateral meetings with a large range of stakeholders, both public sector and private sector, together with a number of workshops aimed at refining early drafts of the process model as well as assessing the state of readiness of the stakeholders

for eConveyancing. The Commission is especially grateful for the active and positive participation of all the stakeholders in this process, which greatly added to its value.

1.34 The Modelling Report published with this Report, which runs to over 180 pages, is the result of that detailed study and analysis. It reflects the high value of the contribution made by the entire BearingPoint project team, including their legal advisers and international associates who attended and facilitated the workshops - as well as the involvement of the stakeholders themselves.

1.35 The Commission would also like to record its thanks for the enormous commitment of the members of the Project Board during this time, which included participation in a number of strategy workshops, ongoing assessment of the progress of the study and detailed comments on drafts of the process model and of the final Modelling Report itself. The Commission especially appreciates that the majority of the Project Board members were involved on a voluntary basis.

1.36 Finally, the Commission is especially appreciative that this complex study, which was based on a fixed price, was completed within the timeframe envisaged.

CHAPTER 2 OVERVIEW OF THE MODELLING REPORT

2.01 In this Chapter, the Commission sets out its own general overview of the Modelling Report, against the general background of the eConveyancing Project which has been described in Chapter 1. For convenience, the Commission has included as an Appendix to the print version of this Report the Executive Summary of the Modelling Report prepared by BearingPoint: the full Modelling Report is attached as Appendix B in CD-Rom format.

A Outline of the Modelling Report

2.02 The Modelling Report runs to over 180 pages and involves 3 major elements. First, it contains an ‘end-to-end’ process model of the current entire conveyancing process. This involves a graphic illustration of the current ‘as-is’ conveyancing process, which has the potential to form the basis for an eConveyancing model. The second element is a comprehensive overview and analysis of the role played by the many public and private stakeholders associated with the current conveyancing process and their technological state of readiness for eConveyancing. The third element consists of a vision and strategy for eConveyancing in Ireland supported by conceptual operating models and an outline roadmap of how to achieve it.

B The process model

2.03 A key requirement of the process modelling study, as set out in the Invitation to Tender (ITT) document, was that it would provide a detailed analysis of the conveyancing process itself. The analysis conducted by BearingPoint has implemented this fully.

2.04 In common with other common law jurisdictions, conveyancing in Ireland and its associated processes have evolved over several hundred years. The Modelling Report, when seen as a step on the road to eConveyancing, sought to analyse thoroughly those existing processes in advance of making strategic decisions on future

direction. In summary, it sought to provide a full lifecycle view of the conveyancing process in Ireland by identifying and documenting the key processes associated with conveyancing, identifying and documenting opportunities for simplification and consolidation and rationalisation of processes with the ultimate objective of informing an outline development 'roadmap' for the introduction of an eConveyancing system in Ireland.

2.05 The Commission considers that the graphic illustration of the current 'as-is' conveyancing process in the Modelling Report is of value in itself. It is also worth noting that during the study conducted between August and December 2005, a great deal of software-based analysis was also developed, and this included detailed process, procedural and inflow flow descriptions. This analysis formed the basis for detailed working papers which were made available to the Commission and to participants in the workshops organised by BearingPoint but, because of their draft nature, they are not included in the final Modelling Report. Nonetheless, these background working papers and associated software are an important asset and can be brought to bear in the next phases of the eConveyancing process.

C Application of technology to conveyancing

2.06 As the Modelling Report notes, the development of computer technology in recent years has been staggering. It is especially useful for the storage, processing, retrieval and dissemination of information. These developments - coupled with the spread of the Internet usage - have made eCommerce a reality in the daily life of business and, increasingly, for private individuals. Applying eCommerce to speeding up a process such as conveyancing is obvious and it is, therefore, no surprise that a number of other jurisdictions have already developed systems designed to realise that potential. Some of those systems are already operating, such as those in New Zealand and in the Canadian Provinces of Ontario and British Columbia.

2.07 As the Modelling Report indicates, the way these systems operate varies. Some are largely based on the Land Registry system and concentrate on applying computer technology to the registration aspects of the conveyancing process. In that sense they involve an eRegistration rather than an eConveyancing system.

2.08 Other systems have a much wider scope. They aim to apply computer technology to most, if not all, of the stages of the conveyancing process, that is, from the decision of the vendor to sell the property, through the pre-sale stages leading to a binding contract to sell to a particular purchaser, the post-contract stages leading to transfer of the property to the purchaser and, finally, to post-closing matters such as payment of stamp duty and other taxes, vacating previous mortgages and registration of the purchaser as the new owner in the Land Registry or of the purchase deed in the Registry of Deeds. This is more accurately referred to as an eConveyancing system.

2.09 As already noted, the Commission decided in 2003 that it ought to explore the development of a full eConveyancing system for Ireland. There were several reasons for this. One is that the considerable development in the use of computer technology which has taken place in the Land Registry in recent years means that we are already well-advanced towards an eRegistration system. Another is that the Irish Government has in recent years committed itself to a strategy of development of eGovernment and eCommerce.

2.10 Indeed, as the Modelling Report notes, An Taoiseach, Mr Bertie Ahern TD, made specific reference to eConveyancing during his speech to mark the 30th Anniversary of the Commission on 23 June 2005, when he said:

“An area of the law which affects practically every family and individual in our community is what is broadly referred to as land law and conveyancing... modernisation, simplification and reform is long overdue...many of us will have experienced the delays and difficulties which can occur, for instance, in the technicalities of buying a home. The aim of the e-conveyancing project is, in simple terms, to bring this process into the 21st Century. As you know the Government is committed to moving towards e-Government and I see the move towards e-conveyancing as a vital part of this project.”

2.11 The general strategic background is dealt with in the Modelling Report, which explains how an eConveyancing system would fit in with that strategy and enhance it. Another reason is that, given the experience of other jurisdictions that there are benefits to be gained from a full eConveyancing system, there is everything to be said for seeing if we can learn from that experience.

2.12 The Modelling Report is not, therefore, just a study of the existing conveyancing process and of other jurisdictions' systems. It moves on from that to evaluate and draw conclusions as to where problems lie in the current process and how they might be solved by use of computer technology and improved processes.

D Current state of readiness

2.13 The Modelling Report also details the 'state of readiness' for eConveyancing of the key stakeholders involved in the process and concludes that this varies enormously.

2.14 In view of this, it has to be recognised that a fully comprehensive eConveyancing system will only work if that state alters. Consideration will have to be given as to how this can be achieved. It is also important to be realistic about the time-scale which may apply to some stakeholders.

2.15 Notwithstanding this, it is important to recognise that the state of readiness of some key stakeholders is already considerable. The Modelling Report draws attention, for example, to the substantial computerisation programme already in place in the Land Registry. It also points out that Land Registries have played a central role in the development and running of eConveyancing systems in other jurisdictions. There is, therefore, something substantial to build on.

2.16 Another important point is that the ultimate aim of introducing a comprehensive eConveyancing system should not detract from the possibility of making improvements to the current conveyancing process which fall short of the comprehensive system. The Modelling Report identifies numerous 'quick win' changes in practice or procedure which would bring about improvements. Some of these, such as development of more standardised forms and documentation, would not involve the use of computer technology. Others, such as improved communications between stakeholders, both public and private sector, are only partly connected with technological change. Any such changes, whether interim or long term, can be examined as a matter of urgency in the next stage identified in the Modelling Report.

E The next stage and the roadmap

2.17 The third element of the Modelling Report consists of a vision and strategy for eConveyancing in Ireland supported by conceptual operating models and an outline roadmap of how to achieve it. In that context, it identifies that the next phase, lasting 12 to 18 months, would involve developing a detailed implementation plan. This would be followed by the gradual implementation of eConveyancing, based on a detailed action plan. It is clear from the Modelling Report that considerable discussion has already taken place with the various professions and bodies involved in the conveyancing process. The Commission envisages that further discussion will take place in the next stages.

2.18 The introduction of an eConveyancing system will be an incremental and multi-staged process. One reason for this is the varying state of readiness of different stakeholders. Thus it may be that, initially the system will be operated by some only of the stakeholders, with others joining it later. Another reason is that it will be essential to test whatever model is eventually developed. The initial pilot project may be tested not only amongst limited categories of stakeholders, but also amongst a limited range of those within a particular category of stakeholder.

2.19 This leads to a final point which the Commission wishes to emphasise, namely, that the next stages should be pursued with vigour. The Modelling Report contains some sobering information about Ireland's position relative to other countries on the use of computer technology. The introduction of eConveyancing clearly fits in with the Government's existing strategy for eGovernment and eCommerce. On eConveyancing, Ireland is well behind other jurisdictions, but that does have some advantages. As the Modelling Report points out, we can learn much from international experience. In learning from others, we can make rapid progress towards restoring our position in the adoption of technology for the benefit of the citizen and to position Ireland as a leader in this important area.

CHAPTER 3 THE COMMISSION'S OVERVIEW AND RECOMMENDATIONS

3.01 The Commission has studied carefully the detailed recommendations contained in the Modelling Report and has generally adopted the various recommendations contained in it. These are set out in the Executive Summary of the Modelling Report (appended to the print version of this Report) and discussed in more detail in Chapters 7-11 of it. The Commission does not propose to repeat them here, but considers it appropriate to make some specific remarks.

A eConveyancing and government

3.02 The Commission remains of the view that it is appropriate to introduce an eConveyancing system for Ireland, but it equally endorses the view expressed in the Modelling Report that this is an important matter of policy for government. Indeed, as the Modelling Report identifies, international experience shows that the introduction of eConveyancing is successful where there is clear government commitment and involvement. If it is accepted that eConveyancing could be an important element in implementing the Government's existing strategy for eGovernment and eCommerce, it is for the Government to decide how it can best be incorporated in it.

B Next stages

3.03 The key recommendation in the Modelling Report is the establishment of a Project Board drawn from the key public sector and private sector stakeholders with specific terms of reference to co-ordinate the next phase in the development of an eConveyancing system for Ireland.

3.04 The primary task of the proposed Project Board would be to make a detailed assessment of the most appropriate model for eConveyancing in Ireland, including preparation of proposals for

Government as to the design, establishment, operation, governance and implementation of the proposed model. It is important to recognise, however, that the Modelling Report draws attention to two other, related, workstreams.

C Improvements to the conveyancing process

3.05 One of these workstreams involves making improvements to the existing conveyancing process, which are not dependant upon or necessarily linked with an eConveyancing system. Such ‘quick wins’ can be achieved whatever the outcome of the eConveyancing Project and ought to be pursued as a matter of urgency.

3.06 The Commission hopes that the various stakeholders, especially those which play a central role in the conveyancing process (such as solicitors and lending institutions), will agree that, whatever the ultimate outcome of the eConveyancing Project, urgent discussions should take place to consider the process changes suggested in the Modelling Report.

D Legislative change

3.07 The second workstream involves legislative changes. The Commission wishes to make two comments on this. First, as mentioned earlier in this Report, work on modernisation of legislation relating to land law and conveyancing is well advanced. As already noted, the *Land and Conveyancing Law Reform Bill*, based on the Commission’s *Report on Reform and Modernisation of Land Law and Conveyancing Law* (LRC 74–2005), is expected to be published as a Government Bill in 2006. This will repeal a huge range of obsolete legislation and replace what is still of relevance in a modern and more simple form. The second point is that the drafting of this Bill has anticipated the possibility of eConveyancing, so that the need for further legislation to facilitate introduction of eConveyancing can be minimised. In so far as adjustments are desirable, it is likely that they can be made by Ministerial Order, following the model in the *Electronic Commerce Act 2000*. In any event, it seems clear from the Modelling Report that eConveyancing will involve changes in practice and process, rather than significant new legislation.

E Concluding comments

3.08 In conclusion, the Commission takes this opportunity to provide an overview of the eConveyancing Project it began in 2003 with an intended time frame of up to 4 years. In that respect, the Commission considers that the principal objectives it set out to achieve in 2003 have either been achieved or are close to fruition. It would like to add a number of general comments.

3.09 The Commission reiterates that eConveyancing should be introduced on a phased, graduated, basis.

3.10 The Commission would like to acknowledge publicly the high degree of engagement by all the stakeholders in the work between August and December 2005 that contributed greatly to the high quality of the Modelling Report.

3.11 The Commission generally supports the process model developed in the Modelling Report as a basis on which the processes it has identified can be tested on a pilot basis in the next stages involved in introducing eConveyancing.

3.12 The Commission notes the varying state of readiness of the various stakeholders and agrees that this is a matter that requires urgent attention in the next stages involved in introducing eConveyancing.

3.13 The Commission also welcomes the formation of eConveyancing project teams by the Law Society of Ireland and local authorities.

3.14 The Commission concurs with the recommendation in the Modelling Report that there should be an early start to the next stage in introducing eConveyancing in order to maintain the momentum generated to date and to develop further the increased interest of key stakeholders.

3.15 The Commission notes that the Modelling Report has identified many immediate ('quick win') and longer term benefits that can accrue from continuing with the ultimate introduction of eConveyancing.

3.16 The Commission notes that the immediate ('quick win') benefits include:

- standarisation of documents used by the various stakeholders

- avoidance of overlap in sourcing information from stakeholders
- increased communication between stakeholders.

3.17 The Commission commends the engagement of the many stakeholders in the parallel developments that involve longer term benefits and which have some impact on eConveyancing, notably:

- the developments in the Land Registry including its Digital Mapping Project and planned eRegistration initiative
- the new planning systems available to local authorities through the Local Government Computer Services Board.

3.18 Since the Modelling Report was completed the Commission has become aware that an eStamping Project is being developed in the Revenue Commissioners.

**APPENDIX A EXECUTIVE SUMMARY OF THE MODELLING
REPORT**

EXECUTIVE SUMMARY

1.1 The Case for Change

“An area of the law which affects practically every family and individual in our community is what is broadly referred to as land law and conveyancing....modernisation, simplification and reform is long overdue....many of us will have experienced the delays and difficulties which can occur, for instance, in the technicalities of buying a home. The aim of the e-conveyancing project is, in simple terms, to bring this process into the 21st century. As you know the Government is committed to moving towards e-Government and I see the move towards e-conveyancing as a vital part of this project.”

(Extracts from the speech given by An Taoiseach, Mr. Bertie Ahern, on the occasion of the thirtieth anniversary of the Law Reform Commission, 23/6/2005)

Conveyancing in Ireland, in common with other common law jurisdictions, has evolved over several hundred years. For the vast majority of citizens the purchase of a property for residential purposes represents the single most significant financial transaction that they will undertake as individuals during their lifetime. While many of the transactions conducted are relatively straight-forward, the overall process is perceived as being complex, inefficient and costly, due in no small part to the quantity of documentation involved, the diversity of sources from which information must be obtained and the number of stakeholders who are normally involved. In addition, the underpinning legislation relating to land law and the legal conveyancing process of establishing title is recognised as being outdated and in need of reform.

As part of the Government’s Programme of Regulatory Reform and in line with its eGovernment strategy, the conveyancing process has been identified as one where the combination of a modernisation of associated statutes and improvements in business processes, enabled by new technologies, could result in significant benefits to a wide range of stakeholders. This diversified stakeholder community includes government departments and agencies, private sector commercial and professional organisations, as well as citizens themselves. These entities all have different roles within the overall conveyancing process and it is therefore a key requirement of any initiative involved in moving towards an electronic means of

conveyancing, that the various requirements of all these stakeholders are considered.

It is also appropriate to consider the proposed modernisation of the conveyancing process in the context of the development of the Irish economy. The last ten to fifteen years has seen a level of unprecedented growth in economic activity which has in turn led to increased demand in the property and construction sector. It is acknowledged however that this rapid economic growth has not been matched by an associated modernisation and improvement in certain key Government to Business (G2B) and Government to Citizen (G2C) processes. Ireland is currently ranked favourably by the Economist Intelligence Unit (EIU) in terms of general “eReadiness” and ability to leverage new technologies in the Government sector. However, in relation to several key criteria relating to general “ease of doing business”, including property registration, Ireland ranks significantly behind the leading countries (as measured by the World Bank).

It is recognised that any transition to a comprehensive, ‘end-to-end’ eConveyancing solution will require significant changes to existing processes, technology and legislation, as well as addressing the needs of a diverse stakeholder community. This will be a large and complex transformation programme. The experience in other jurisdictions has shown that a business case does exist for undertaking an eConveyancing initiative of this nature and that the anticipated benefits have accrued to the stakeholders involved.

1.2 Terms of Reference

The Law Reform Commission (“the Commission”) initiated work in relation to its eConveyancing project in early 2003 as part of its Second Programme of Law Reform. The identification of the conveyancing process by the Commission as one where significant reform was potentially required was driven by a number of factors:

- Firstly, the overall process was perceived as being inefficient, complex and paper intensive, which resulted in relatively high costs being incurred by private house purchasers.

- Secondly, advances in technology had resulted in an increased demand to conduct business on-line, both in Ireland and internationally, and a number of other jurisdictions had successfully implemented full or partial eConveyancing solutions which had resulted in significant benefits to the broad stakeholder community.
- Finally, it was recognised that reform of substantive land law in Ireland, which underpinned significant elements of the overall conveyancing process, was a key element in the overall strategy to simplify elements of Irish Law so as to make them more easily understood and accessible.

The Commission recognised that the implementation of a full end-to-end eConveyancing solution would be a large scale, complex and multi-year programme involving several integrated workstreams. As the initial project within this programme, Phase I was initiated with its objective being to complete an ‘As-Is’ model of the current process and each stakeholder’s involvement in it, including:

- A detailed analysis, documentation and modelling of the business processes which underpin the end-to-end conveyancing process in Ireland.
- An assessment of the readiness of the key stakeholders to support and engage in a future eConveyancing solution.
- An assessment of process improvement opportunities.
- A high-level eConveyancing process and technical model.
- A programme roadmap to assist with transition and implementation planning.

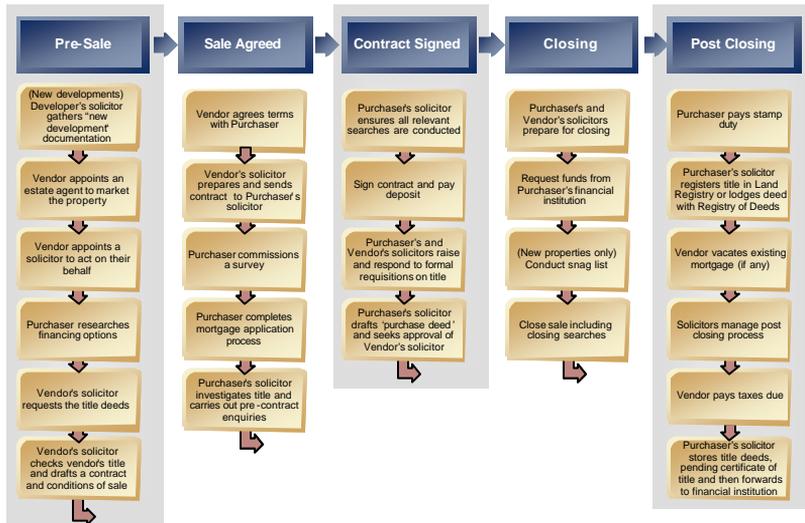
This report details our findings and recommendations following the completion of Phase I and sets out our vision and strategy for proceeding with subsequent phases of the programme.

1.3 Overview of the Current Conveyancing Process

In the context of this project it is important to recognise that the conveyancing process refers to all activities conducted in connection with the sale and purchase of residential property. This process commences with the initial placement of an advertisement offering a

property for sale and concludes with the stamping and registration of the purchase deed and the lodgement of the documents with the purchaser's lending institution. The following diagram illustrates the overall process, with key activities summarised under five high-level phases.

Figure 1.1: Key phases in the current conveyancing process



The *Pre-Sale* phase of the conveyancing process can be seen as the preparation stage. This is the phase where the vendor, along with their solicitor and/or estate agent prepares the property for sale.

The *Sale Agreed* phase begins once the purchaser identifies a property they wish to purchase and places an offer on that property. The sale is agreed and the purchaser must formally organise their finance. In addition to this, the purchaser's solicitor will carry out some initial investigations into the property.

The *Contract Signed* phase of the conveyancing process involves the preparation for drawing up the contract including any remaining investigations (e.g. title searches, surveys, planning approvals) that must be carried out on the property. Once the contract has been formulated it may go through many iterations before the terms in the contract are agreed upon.

The *Closing* phase begins once the contract has been signed and all associated queries ("requisitions") have been dealt with. In the

closing phase of the conveyancing process, the purchaser's solicitor and the vendor's solicitor will each have a number of responsibilities to bring the sale to a close, which includes exchanging title deeds and monies.

The *Post-Closing* phase takes place once the sale has been closed and concludes the conveyancing transaction. The main activities involve paying all taxes due, paying off the existing mortgage and registering and storing deeds.

NOTE: To support this high-level model, detailed and multi-level process maps were developed in consultation with the stakeholder community. These were used to identify areas where improvements could be made, including straight-forward changes to the process itself and those which would be enabled by changes to current legislation or by deploying new technology.

1.4 Key Findings in Relation to the Current Situation

This report contains the detailed findings from our analysis of the processes used in conveyancing in Ireland. The main purpose in doing so was to identify inefficiencies, bottlenecks and possible barriers to the adoption of an eConveyancing system in Ireland. While the processes have been documented in detail, they are not intended to be used as a manual on conveyancing or to be definitive, as the reality is that in practice there are many variations in how the detailed steps are executed.

The processes were documented through consultation with all of the main stakeholders such as: solicitors, law searchers, estate agents, financial institutions, the Land Registry and Registry of Deeds, the Revenue Commissioners, the Courts Service, local authorities, surveyors and developers. Other interested parties (e.g. Ordnance Survey, Consumer Association) were also consulted for their views. A full list of those consulted is contained in Exhibit A.

There are two principal outputs from our work in analysing the current “As-Is” situation:

- 1. Process Analysis:** detailed step-by-step documentation (in flowchart and narrative form) of the main processes with supporting commentary on the issues, the bottlenecks and the opportunities for improvement.
- 2. Stakeholder Analysis:** a preliminary review of the main stakeholders’ current capabilities in regard to their organisational and technical (IT) capacity to successfully change to an eConveyancing environment. Clearly, this capability will continue to evolve in the lead up to eConveyancing.

In addition to documenting the detailed steps, we have summarised what we consider to be the main issues from the process and stakeholder analyses under the headings of: Process, Information, IT Systems, Legislation and Culture & Tradition and Education & Training.

1.4.1 Process

- The conveyancing process has become increasingly complex in recent years.
- The current process lacks appropriate transparency both across the process and stakeholder groups.
- There is no “standard” residential property conveyancing process across all stakeholders. It should be noted that the Conveyancing Committee of the Law Society has been proactive in providing guidelines for correct conveyancing practice and in regularly publishing practice notes as professional guidance for solicitors.
- The process involves substantial paper-based information flows that continue to rely on the postal method.
- Delays are increasingly recognised as an inherent part of the process.

Standardisation and simplification of processes will improve efficiency and facilitate eConveyancing.

1.4.2 Information

- Information needed throughout the process is dissipated across several different parties – and physical locations - and can be complex to retrieve.
- The quality of information received during the process can vary considerably.
- The amount of documentation generated as part of the process has increased.
- Despite recent initiatives, there remains a lack of standard documentation generated and required in the process.
- The storage and maintenance of paper based files can be costly and errors can be made (e.g. paper documents can get damaged or misplaced).

Easier access to land information through centralisation or better cross-referencing and filing would speed the conveyancing process, as would more standardised documentation. The need for physical documents and in-person signing of documents needs to be considered and alternatives (e.g. digital signatures, secure document transmission/storage) accepted to facilitate eConveyancing.

1.4.3 IT Systems

- Stakeholders are at various stages of development in relation to IT use and organisation.
- Some stakeholder groups are more progressive in terms of their use of and reliance on IT within the organisation than others.
- There can be significant differences in IT capability within stakeholder groups. Some of the smaller organisations and stakeholder groups have high IT literacy and usage.
- Certain stakeholders have articulated IT strategies that will support eConveyancing, notably the main information providers in the state sector.
- Some stakeholders have external connectivity or eCommerce capability.
- The efficacy of the overall process relies on the “weakest link” in the stakeholder chain.

- There has been limited co-operation across stakeholder groups in terms of IT development.
- Some stakeholders are limited in their IT development expertise and capability.
- Many stakeholders voiced an interest in an eConveyancing solution.
- Stakeholders may have competing demands for their IT resources.

The demands that eConveyancing will place on stakeholders are not fully understood at this point. Their capacity to undertake the IT development necessary varies greatly, which is largely dependent upon the size of the organisation. Several key information providers have IT facilities and development plans which will enable eConveyancing.

1.4.4 Legislation

- The current process is aligned with the current legislation.
- Ireland's dual system of land registration impacts significantly on the efficiency of the current process.
- The legislation underpinning the process has become increasingly complex, particularly in relation to taxation and planning.
- Some of the legislation that impacts on the conveyancing process is out-dated and in need of reform.
- The Law Reform Commission has completed substantive work with the objective of modernising land and conveyancing law in Ireland.
- The Electronic Commerce Act provides for digital signature of documents but will need to be extended by Ministerial order to allow its use in conveyancing.

We have offered some observations on what would be the priority areas for eConveyancing.

1.4.5 Culture & Tradition

- A culture of conservatism and caution is prevalent in the conveyancing process.
- There may be limited co-operation between stakeholders where personal relationships do not exist, particularly with regard to the solicitor-to-solicitor relationship.
- Stakeholders continue to rely on traditional forms of communication and payment rather than existing electronic means available.
- Delays are perceived as “part of the process”.

Technology alone will not improve efficiency; traditional roles and practices will need to change to make a success of eConveyancing.

1.4.6 Education & Training

- Limited consumer understanding of the conveyancing process which can cause delays (e.g. if consumers are not proactive in obtaining title deeds and arranging life cover).
- Varied level of understanding of the process across stakeholder groups.

Improved communication between the stakeholders and education about eConveyancing will be needed for stakeholders and indeed, consumers.

1.5 The Experience of Other Jurisdictions

The following five jurisdictions were chosen for study because of their levels of advancement and their similarities to the Irish conveyancing process:

- Ontario, Canada
- England and Wales
- New Zealand
- Australia
- South Africa.

Specifically, the reasons for further investigation of the selected jurisdictions were as follows:

- Ontario and New Zealand have been engaged in some aspects of an eConveyancing solution longer than any other jurisdiction and as a result, are the foundation models for all modern eConveyancing solutions.
- The conveyancing process in each of the jurisdictions selected has similarities to the Irish conveyancing system in terms of stakeholders involved.
- All five jurisdictions have faced similar challenges to Ireland in terms of issues with the traditional paper-based conveyancing process such as: the major generation of paper based documents, inherent delays in the conveyancing process due to communication difficulties between different stakeholders, and the difficulty in retrieving information lying in different repositories and databases.
- Issues such as the operation of a dual registry system and land issues such as mapping are present in the jurisdictions analysed.
- All five jurisdictions have had to conduct analysis of the legislative basis for conveyancing and, where necessary, have needed to amend legislation to enable an eConveyancing solution.
- All five jurisdictions have encountered issues during their implementation phase and those currently in development have determined challenges that will need to be overcome to ensure success of the solution, challenges such as; involving the varying stakeholders, education and training relevant stakeholders and users, and sequencing a phased implementation approach. The experiences and lessons learned from these challenges provide important information to consider when developing an implementation approach for an Irish solution.

These jurisdictions offer differing possibilities for the development of an Irish eConveyancing solution in terms of functionality. All of them present learning opportunities that, if grasped, can increase the effectiveness of the development and deployment of the Irish solution. These include:

- **Government Commitment:** The more successful projects have had long-term and sustained government backing.
- **Strong Governance Arrangements:** It is essential that appropriate governance structures are put in place so that there is an appropriate project sponsor who is properly resourced to run the project.
- **Financing Arrangements:** Appropriate financing arrangements must be in place that align with a long-term project that could have a timescale of ten years or more. The distinction between which areas are financed exclusively by public funds, private funds and by public private partnerships must be carefully decided and appropriate governance and financial accountability structures must be put in place to manage these differently financed areas.
- **Sequence of Developments:** All jurisdictions have (or will have) implemented a phased approach in terms of module development and deployment. The correct decision regarding what modules to develop and implement first must be made in order to maximise the credibility of the project in terms of appeal to the stakeholders while doing so at minimal risk. The sources of funding must also act as a key driver of the overall solution by influencing the development of particular modules.
- **Stakeholder Buy-In:** Early consultation with the key stakeholders is essential to ensure support for the solution is achieved and that all stakeholders are satisfied with the solution being developed. This can create momentum in terms of development and financing. Continuing stakeholder involvement is essential and can be achieved through governance structures that enable stakeholders to act as shareholders in the relevant modules in which they participate. A strong stakeholder acting as partner such as the financial institutions or the legal profession can act as a key driver of total stakeholder buy-in.
- **Simplifying Processes:** Successful solutions have begun the development process by redesigning the existing conveyancing process and standardising documents.

- **Operation of Dual Systems:** While the operation of dual systems (i.e. old and new in parallel) is necessary to aid the transition between paper and electronic conveyancing, it is necessary to specify a time when compulsory use of the electronic solution is mandated. This can be either based on a timeframe or when the uptake reaches a certain level of participation (e.g. 70%).
- **Marketing, Education and Training:** This is one of the most underestimated elements of the development and deployment of the system, yet it is acknowledged by all the other jurisdictions examined as perhaps the most important. Stakeholder buy-in can only be achieved through marketing the solution to stakeholders and educating them on the benefits to be realised and the challenges to be addressed by each stakeholder. Training and converting users is essential in order to ensure that the uptake of the solution is high. This ensures that the credibility of the solution in the industry is also high thus generating further awareness and further uptake. Appropriate financing for marketing, education and training must be built into any business case and financial plan. This has been overlooked in other jurisdictions to their detriment.

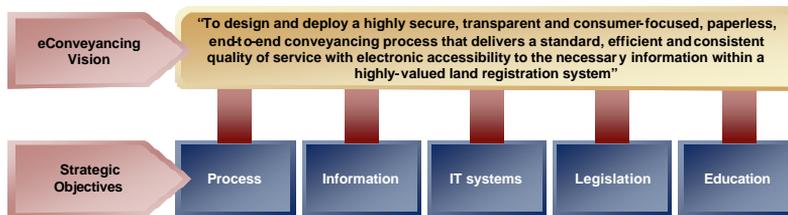
Given the levels of functionality that are desired, the Ontario model offers the approach that best fits the Irish environment. The scope of the entire Ontario solution, including the value-added modules, would offer all stakeholders the levels of functionality they require for an all encompassing end-to-end eConveyancing solution. For example, solicitors would be able to conduct all their dealings using an electronic system. The Ontario solution formed the starting point in the development of the eConveyancing solution in New Zealand, which in turn influenced the Australian development in the state of Victoria. Added to the scope of the Ontario solution would be the approach of the Land Registry in England and Wales around the creation of a ‘notional register’ to enable registration on the day of closing.

1.6 A Proposed Model for eConveyancing in Ireland

A key element of the work which has been undertaken was the development of an overall strategic vision for eConveyancing in Ireland along with a number of key strategic objectives. The proposed

“vision statement” was discussed with a number of key stakeholders who strongly supported it and its realisation.

Figure 1.2: Proposed “Vision Statement” for eConveyancing in Ireland



The “vision statement” will help formulate strategic objectives in each area. These overall objectives and principles in turn informed the design of high-level operating (process), technical and business models, which were developed with reference to leading and successful models already operating in other jurisdictions.

The *operating model* represents the potential future eConveyancing process and has been developed following the detailed analysis of the “As-Is” situation. It encompasses three key elements within the overall transformation programme - process and service (including legislative), technological and organisational.

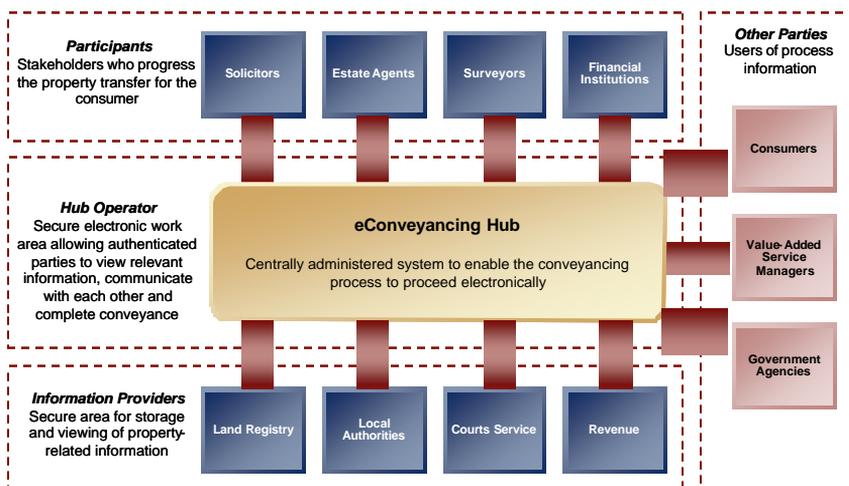
The *technical model* describes the technical (IT) framework and architecture required to support a solution such as this. There are a number of potential approaches as evidenced by the different implementations in other jurisdictions such as: New Zealand, Ontario, British Columbia etc. We have taken cognisance of these implementations and have drawn on what is specifically required in an Irish context to develop our proposed technical model. A central hub model has been proposed based on assessing a number of options against key criteria, including: security, scalability, availability, ease of maintenance, extensibility, cost effectiveness and risk aversion.

The *business model* addresses the options for funding and running the proposed eConveyancing process and technical models as outlined in earlier sections. It considers how the stakeholders and the State may play roles in implementing the model and what the financing options are going forward. The proposed approach includes the development of detailed business plans and business models for the key stakeholders and further assessment of the merits of a Public Private

Partnership (PPP), which appears to be the most appropriate mechanism for funding the investment required.

The proposed overall future operating model is illustrated below.

Figure 1.3: Overview of the future eConveyancing model¹



Within the proposed model there are four main constituents:

- **Participants** – These are the stakeholders involved in the conveyancing transaction (including solicitors, financial institutions and surveyors). As such, they are responsible for actively completing the various steps within the overall process and progressing the property transaction for the consumer.
- **Information Providers** – These are the stakeholders whose role is primarily to receive information or to provide it to the participants on matters of: title, encumbrances, planning, certificates, taxes/duties, etc. They are mostly state bodies. The main Information Providers are: Land Registry/Registry of Deeds, local authorities, the Courts Service and the Revenue Commissioners. Other occasional Providers include the General Registry Office (GRO) and the Companies Registration Office (CRO).

¹ Note : not all stakeholders have been shown in this figure due to space constraints, others will be involved (e.g. Law Searchers, Developers, etc.)

- **Hub Operator** – At the centre of the proposed solution is an overall eConveyancing Hub. The purpose of the hub is to act as a central “workspace” for participants, providing case management, workflow, document management, payment, reporting, authentication and messaging functionality to enable the future process. The individual information providers would provide services to the central hub to support the completion of the conveyancing transaction.
- **Other Parties** - These are those stakeholders who have an interest in the process but are not transacting directly. They include consumers acting as vendors or purchasers and some state bodies and industry bodies collecting statistics or offering value-added services.

1.7 A Roadmap for Implementation

There is a clear ‘case for change’ to improve the current conveyancing process, as it would benefit Irish citizens and the other stakeholders. We recommend that the Government takes a leadership position in informing and designing the most appropriate eConveyancing model for Ireland for the following reasons:

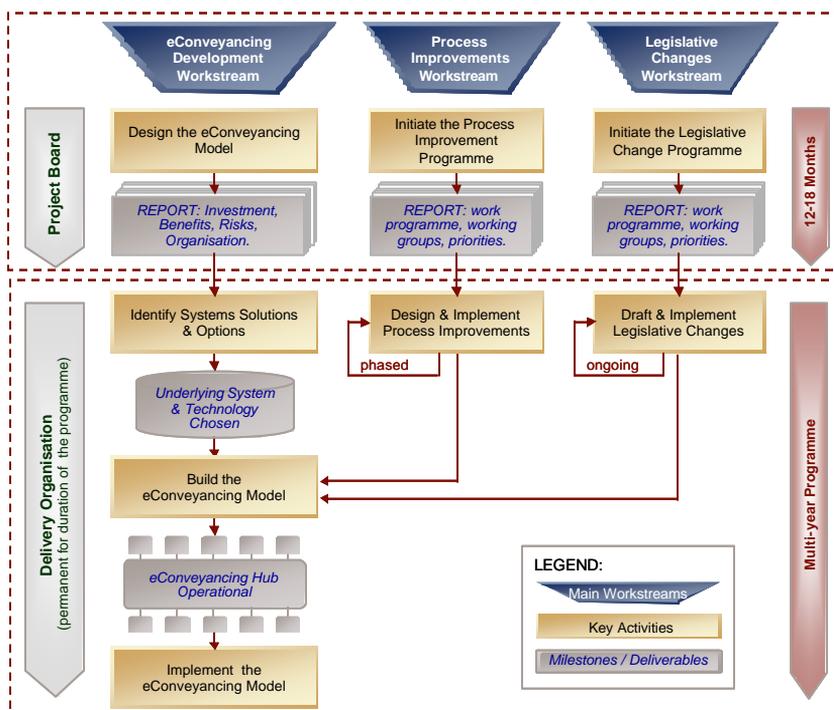
- It would support the Government’s mandate to continually improve the provision of public services to consumers.
- Ireland would become less attractive to investors should it choose to do nothing.
- The experiences of other e-enabled jurisdictions emphasise the important role of the State.
- The State is the owner of much of the property-related data.
- eConveyancing could be a source of revenue and intellectual capital for the State.

This “roadmap” for moving forward with eConveyancing envisages three workstreams:

- **eConveyancing Development workstream:** initially, involving a detailed assessment of the case for eConveyancing and the appropriate model (operational, technical and business) for its delivery and then, if appropriate, to move on to the next steps of building and implementing the full eConveyancing model.

- **Process Improvement workstream:** involving the identification, organisation and implementation of improvements to the current process, based on the opportunities identified in this report.
- **Legislative Changes workstream:** similarly, some legislative changes are identified which facilitate and underpin the eConveyancing model.

Figure 1.4: High Level Roadmap for eConveyancing



The eConveyancing Development workstream would be concerned with the development and deployment of the eConveyancing solution from operational, technical and business model perspectives. In the initial stage, it would design the business model (including cost/benefit analysis, resourcing and funding) and seek to learn from similar projects in other jurisdictions. If the project was approved it would then move onto design, develop and deploy the new eConveyancing system. Strong stakeholder participation would be vital for success.

In parallel, work should proceed on implementing the process improvement opportunities identified in this report and the legislative changes needed to support these improvements and any needed for eConveyancing.

The eConveyancing vision that we have proposed implies significant changes to existing processes, technology, legislation, established tradition and culture, education and understanding of the process by a diverse stakeholder community. This represents a large-scale, multi-year and complex transformation programme. However, experience in other jurisdictions has shown that considerable anticipated benefits have accrued to the stakeholders involved thereby making the investment worthwhile.

We believe that implementing eConveyancing successfully requires an active, committed role from Government. We recommend that the Government's initial priority should be to establish an organisational structure with the resources and mandate to effectively deliver improvements in processing, timescales and costs to the end-to-end conveyancing process. An inter-agency body would co-ordinate the three workstreams, namely eConveyancing Development, Process Improvement and Legislative Changes. This body would lead development and implementation of improvements and report to the Government on the ultimate feasibility of the latter specifying a roadmap to eConveyancing in greater detail.

We therefore recommend that the development of the eConveyancing programme should commence with the establishment of an appropriate governance structure to lead, manage and monitor the design and development of the eConveyancing programme. In advance of a permanent organisation being identified to lead the eConveyancing programme in the longer term, we recommend that an eConveyancing Project Board be established to manage the programme for the next 12 -18 months (as identified in Figure 1.4). It is important that this is done without delay to ensure continuity and to build upon the momentum arising from the work done by the Law Reform Commission, government departments, state agencies and other stakeholders.

Membership of the eConveyancing Project Board should include the key stakeholders within the relevant Government agencies and should

also include membership from the representative bodies of key “private sector” stakeholders including the legal profession. The Board should be given adequate resources and budget to enable them to deliver on their terms of reference. It would be ultimately responsible for ensuring that effective governance and implementation controls are in place for developing and managing the eConveyancing roadmap during the initial 12 – 18 month period:

The priority for Government is to identify and agree clear ownership and responsibility for the further development of the eConveyancing programme. We believe that the ongoing role of the Irish Government in this programme is fundamental to its long term success. We believe that the development of the eConveyancing project should commence in 2006 with the establishment and appointment of an eConveyancing Project Board, with a clear mandate of deliverables, to set out the eConveyancing programme through its next phase of design and development.

The proposed Project Board would be to conduct a detailed assessment of the most appropriate model for eConveyancing in Ireland including preparation of proposals for Government as to the design, establishment, operation, governance and implementation of the actual model. Thereafter, it would be a matter for Government to decide the appropriate long-term organisational and governance structures for the next phases of the project.

1.8 Next Steps

We recommend the following key steps:

1. Establish the eConveyancing Project Board

An eConveyancing Project Board (as described above) should be established. Membership of the Project Board should include the key stakeholders within the relevant Government agencies and should also include membership from the representative bodies of key “private sector” stakeholders including the legal profession.

The eConveyancing Project Board should be given adequate resources and budget to enable them to deliver on their terms of reference.

2. Develop and agree Terms of Reference for the eConveyancing Project Board

The initial key objective of the Project Board will be to recommend the most appropriate mechanism to implement the recommendations from this report to Government. This includes the following outputs:

- (a) The specific recommendations that should be implemented, considering value for money for the public sector, role of (and benefits to) key participants, benefits to the citizen and to ensure effectiveness, openness and transparency in the conveyancing process.
- (b) The level of investment and projected benefits to be gained from the phased implementation of these recommendations, including the identification of specific metrics that can be used to assess their progress.
- (c) The organisation and infrastructure, whether new or existing, (including its funding model, structure, governance and the operational processes it will support) required to implement the recommendations.

- (d) An assessment of the risks and approach to their mitigation. This risk assessment will be of particular importance where certain activities will be undertaken for the first time, either from an organisational perspective (e.g. funding models), or from a process perspective (e.g. business authentication, electronic payment mechanisms).
- (e) The development of a high-level solution architecture to support the processes that will be managed by the organisation. In doing so, there should be particular reference to where elements of the solution exist in other agencies within the public service.
- (f) Develop effective communications channel with relevant stakeholders and ensure their continuing involvement with and buy-in to the project.

3. The Project Board should report to Government within 12-18 months

The Project Board will develop a report detailing its recommendations. We strongly recommend that this should be completed within a 12-18 month timeframe and presented to Government for decision-making with regard to the subsequent implementation of an eConveyancing system.

**APPENDIX B REPORT ON MODELLING OF THE IRISH
CONVEYANCING SYSTEM BY BEARINGPOINT**

**MODELLING OF THE IRISH
CONVEYANCING SYSTEM**

