

MERCANTILE LAW (CHOSE IN ACTION) BILL 1989

Minister for Community Services

SUMMARY

Background

The law of Norfolk Island does not include an equivalent of statutory provisions such as section 136 of the Law of Property Act 1925 (UK), section 134 of the Property Law Act (Vic), section 12 of the Conveyancing Act 1919 (NSW) and section 130 of the Property Law Act 1952 (NZ). These provisions, and their equivalent in other jurisdictions, allow debts and other choses in action to be assigned at law. The common law position, which currently applies in Norfolk Island, is that choses in action may be assigned in equity, but not at law. One result is that the need remains in this jurisdiction to join the assignor in an action by an assignee against a debtor.

Details

The Bill, which is modelled on section 12 of the NSW Act, would allow assignments to have effect at law.

Such an assignment must be absolute, and not by way of charge, and express written notice of the assignment must be given to the debtor, trustee or other person from whom the assignor would have been entitled to claim the debt or other chose in action. An assignment has effect from the time such a notice is received.

A procedure is specified with respect to disputed assignments, and an application provision specifies that legal assignments are to be taken always to have been possible.

25 September 1989