



Property Votes—OK?

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Australia often prides itself on being a pioneering democracy—noted for inventions such as the ‘Australian ballot’ that took the violence out of elections and made the polling booth a safe place for women. You might assume therefore that property votes would be a thing of the past, safely consigned to the rubbish bin of history, along with the exclusion of women, the recipients of charity and Indigenous Australians from the franchise. In fact property votes are still flourishing everywhere in Australia except in Queensland and the Territories. How can this be? Did the continuance of property votes at the local government level just get overlooked?¹

One of the central values of representative democracy, enshrined in the International Covenant on Civil and Political Rights, is that of political equality or one vote, one value. As Article 25 of the Covenant says, every citizen shall have the right: ‘To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot’. In most democracies only citizens or long-term residents have the right to vote, they have only one vote and that vote should be as close to equal in value as possible. Over a hundred years ago the Australian Constitution, as the framing document for a new democracy, was careful to specify that the franchise should be the same for the Senate and the House of Representatives, making the Australian Senate a popularly elected upper house, unlike the indirectly elected US Senate of the time, let alone the appointed Senate of Canada. The Constitution also specified that there should be no plural votes for either house (ss. 8 and 30).

Being an advanced democracy is part of the self-image of Australia, particularly by comparison with the United Kingdom, where institutions have been notoriously slow to change. But even the United Kingdom abolished all forms of plural voting and property votes in 1948, the only exception being City of London Corporation. This happened much earlier in the Nordic countries (for example, Denmark abolished property votes in local government in 1908) and in the Nordic context it is regarded as ‘very undemocratic’ to give voting rights to property. In general democracy has meant giving people the vote to balance the power of property, which is exercised in a myriad other ways.

But in Australia, in all States except Queensland non-resident owners and occupiers have the right to vote in local government elections.² In other words property has votes as well as the people resident in local government areas. Queensland removed property votes in 1921, during the same outbreak of democracy that led to the abolition of the Legislative Council in 1922. Elsewhere, apart from the Northern Territory, this is yet to happen. The relative absence of political parties in local government may have meant there was less motivation for State governments to move on the issue.

Not only does property have the right to vote in most States, but in Western Australia and Tasmania non-resident property owners also enjoy plural votes, being able to vote in each ward in which they have property (although in Tasmania this is now restricted to two votes). Plural votes might also derive from being a resident in one ward and a property owner in

¹ My thanks to Colin Hughes, Graeme Orr, Daniel Tarschys and Drude Dahlerup for their helpful comments on this paper.

² See NSW *Local Government Act 1993* s. 266; Victoria *Local Government Act 1989*, s. 11; Queensland *Local Government Act 1993* s. 276; Western Australia *Local Government Act 1995*, s.4.30; South Australia *Local Government (Elections) Act 1999*, s.16; Tasmania *Local Government Act 1993*, s.254.

another. Corporations or groups that own rateable land also have voting rights in Victoria, South Australia and Tasmania, although in Tasmania this is limited to one vote per municipality. Jointly owned property may also give rise to multiple votes, in so far as more than one non-resident gains a vote on the basis of that property (restricted to two joint owners). Moreover, even in States where multiple votes are not available within a municipality, property owners may still vote in each municipality in which they have property. As can be seen from the complexities outlined here, there is a good case for restricting voting rights to residents on the ground of simplicity alone!

While property owners have the right to vote, they are not required to vote, even in those States where voting in local government elections is compulsory for residents, such as NSW and Victoria (the exceptions being the City of Sydney and the City of Melbourne, where both residents and non-resident ratepayers on the roll have to vote).

Historically Australian local government had quite narrow functions, centring on ‘roads, rates and rubbish’. It could be interpreted as primarily a provider of services to property and as primarily funded by rates on property. These were the kinds of argument used to justify the continuance of property votes.

However the 1970s saw a significant shift in the functions of local government in Australia. Local government became a provider of community and human services targeted at the resident population. The growth in children's services provided by local government was the most noticeable aspect of this, but councils also provide disability, multicultural, aged-care and other social welfare services. Moreover the sources of revenue of local government became more diverse. In 2003–04 property rates yielded on average only 37.8 per cent of local government revenue, grants and subsidies 12 per cent, and user charges and fees 30.5 per cent.³ The mix varies between States, with property rates constituting a significantly higher proportion of revenue (59 per cent) in South Australia but much less in the Northern Territory (18 per cent).

The changing role of local government undermines any argument that it is simply for and about property. It raises serious concerns over non-resident property owners having a say in how local government goes about delivering services to its resident population or protecting the local environment. Those who invest in a local government area will have political access and influence that does not rely on having votes in local government elections. The power exercised by property developers over certain municipal councils has been usefully revealed in inquiries by anti-corruption bodies.⁴

An inquiry into local government reform in Western Australia has recently brought the issue of property votes to the fore. Western Australia is the last State to initiate major structural reform in local government—that is, the kind of amalgamations that have occurred in other States. The WA Inquiry was directed to examine both structural and electoral reform. The latter included whether non-residents should continue to be able to vote, whether eligibility should be restricted to those on the State electoral roll and whether people should be entitled

³ National Office of Local Government, 2006, *2004-2005 Report on the Operation of the Local Government (Financial Assistance) Act 1995*, Canberra, Department of Transport and Regional Services.

⁴ E.g., the NSW ICAC (Independent Commission against Corruption) 2005 inquiry into Tweed Heads Shire Council and the Queensland CMC (Crime and Misconduct Commission) 2004 inquiry into the Gold Coast City Council.

to more than one vote per ward, depending on the number of properties they owned. The Inquiry noted among the arguments against property votes: their replacement by the democratic principle at other levels of government; the shift in functions and financing of local government; and the fact that payment of taxes does not give companies voting rights at the State or Federal levels. The Inquiry also noted that other non-residents, such as those who worked or used services in a local government area, also had a significant interest in the operation of local government but were not given votes, unlike non-resident property owners.

Despite these cogent arguments against property votes and the cost of maintaining a separate non-residents' roll, the WA Inquiry ended in 2006 by recommending the continuance of property votes on the grounds of the valid interest of property owners in local government. The only concession to democracy was to recommend that plural votes for property owners or occupiers be abolished (despite overwhelming support from Councils for plural votes to continue).⁵ It should be noted that property owners will still have plural votes if they have property in different local government areas, even if they are restricted to one vote in each.

One interesting point that does not surface in the Inquiry Report is the question of property owners who are foreign nationals. One positive aspect of property votes has been that they have enabled non-citizens to enjoy the municipal franchise. Resident voters normally have to be on the State roll and hence citizens. Australia is generally much more restrictive in relation to its franchise than comparable democracies such as New Zealand (where all permanent residents may vote for parliament or local government) or the UK (where citizens of 75 countries may vote in local government and some other elections).

In Europe, under the Maastricht Treaty, all European Union citizens resident in another member country have the right to vote and stand as candidates in local elections. The European Union also has a 1992 Convention on the Participation of Foreigners in Public Life at the Local Level, designed to ensure that resident non-nationals are involved in decision-making at the local level. The general trend in Europe is towards extending the right to vote in local elections to all residents, not just EU citizens. This is already the case in the Nordic countries and in Ireland, the Netherlands and a number of Eastern European countries, sometimes with a minimum residence requirement.⁶

The general thinking behind the expansion of electoral rights for foreign nationals in other democracies is that in a world of international migration it is unreasonable that people should be subject to decisions over a long period of time without having the opportunity to influence those decisions. First-generation migrants may, in particular, have legitimate reasons not to take out citizenship in the new country because they would lose citizenship or rights in their country of origin and may not be able easily to give up interests in and attachment to their country of birth.⁷ An auxiliary argument for enfranchising foreign residents is to reduce the likelihood of their being used as scapegoats in populist political campaigns. There are few persuasive arguments for forcing residents to become citizens in order to have a say in decisions affecting their locality.

⁵ Local Government Advisory Board, *Local Government Structural and Electoral Reform in Western Australia: Ensuring the Future Sustainability of Communities*, April 2006
<http://www.dlgrd.wa.gov.au/localGovt/advisoryBoard/StructuralElectoralReform.asp>

⁶ Harald Waldrauch, 'Electoral rights for foreign nationals: A comparative overview of regulations in 36 countries', Canberra, Australian National University, National Europe Centre Paper No 73, p. 24.

⁷ *Ibid.*, p. 3.

In Australia, unlike other western democracies, no progress is being made in expanding the political rights of foreign nationals. Rather than responding to contemporary migration patterns, the few rights that exist are either a carry over from a colonial past (the voting rights of British citizens enrolled before 1984) or a flow-on from property votes in local government. Foreign nationals who are property owners enjoy the municipal franchise in Victoria and Tasmania and may also stand as candidates. In South Australia foreign nationals also enjoy the municipal franchise, both on grounds of property and of residency but may not stand as candidates. In Western Australia foreign property owners used to have the same voting rights as in Victoria or Tasmania but the Local Government Act was changed to restrict new enrolments to Australian citizens from 1996. So in Western Australia foreignness now trumps property ownership, and it is only citizen property owners (or occupiers) who still enjoy votes without having to be residents.

It might be noted that in democratic terms Western Australia is also distinguished by having clung on to rural weighting of votes for longer than any other jurisdiction. Although electoral reform in 2005 moved the Legislative Assembly towards one vote, one value, it simultaneously increased malapportionment for the Legislative Council. The Mining and Pastoral and Agricultural regions have gained an additional member each, despite relatively small and declining numbers of voters.

While the proportion of property votes on local government rolls is generally quite small (for example, 2.3 per cent of all voters on combined WA local government rolls), their presence at all appears to violate the basic democratic principle that it should be the people who decide elections, not property. We don't allow property to vote in parliamentary elections any more but we have neglected to extend this principle to local government. While attention has been fixed on moves at the federal level to make it more difficult for eligible voters to enrol and to make it easier for property to make secret donations to political parties, the problematic character of the local government franchise might well be revisited by those concerned about the future of Australian democracy.