VOTING RIGHTS AND AUSTRALIAN LOCAL DEMOCRACY

RYAN GOSS*

I INTRODUCTION

Section 256 of the *Local Government Act 1993* (Tas) is a curious provision. It indicates that, at any given election for a municipal area in Tasmania, any given voter 'has no more than 2 votes'.[1] This provision is designed to facilitate a franchise based partly on property qualifications, and in which plural voting is explicitly allowed. It may seem extraordinary, in the 21st century, that such a franchise may be found in Australian law. But Tasmania is not an outlier. Indeed, in five of Australia's six states, local government franchises include property qualifications, votes for corporations, and various forms of plural voting.

This aspect of Australian local government has been touched on before in the political science and public administration literature and in local government scholarship.[2] Occasionally, there is high profile public discussion of individual instances of this phenomenon, especially with respect to the City of Sydney.[3] But

* Senior Lecturer, Law School, Australian National University. Thanks to participants at the National Law Reform Conference (Canberra, April 2016), Asmi Wood, Amy King, the editors and the anonymous reviewers, for their comments, and to the National Library of Australia. The usual disclaimer applies.

1 This requirement applies both to elections in respect of one municipal area and to elections for a divided municipal area: see *Local Government Act 1993* (Tas) ss 256(1)–(2).

2 See, eg, Frank Hornby, *Australian Local Government and Community Development: From Colonial Times to the 21st Century* (Australian Scholarly Publishing, 2012) ch 7; Yee-Fui Ng et al, 'Democratic Representation and the Property Franchise in Australian Local Government' (2017) 76 *Australian Journal of Public Administration* 221; Marian Sawer and Peter Brent, 'Equality and Australian Democracy' (Discussion Paper, Democratic Audit of Australia, October 2011) <https://core.ac.uk/download/pdf/30680424.pdf>; Marian Sawer, 'Property Votes – OK?' (Discussion Paper No 23/06, Democratic Audit of Australia, August 2006) <https://www.ratepayersvictoria.com.au/wp-content/uploads/2012/02/property-votes-ok.pdf>; Rosemary Kiss, 'Are We Kidding about Local Autonomy? Local Government in Australia' (Paper presented at the Workshop on Local Autonomy and Local Democracy, ECPR Joint Sessions of Workshops, Grenoble, 6–11 April 2001) <https://ecpr.eu/Filestore/PaperProposal/de726070-dbfe-4715-81e5-c30df3405ddc.pdf>.

3 See, eg, Jordan Weissmann, 'In Australia, Businesses Get to Vote', *Slate* (online), 19 August 2014 <https://www.slate.com/articles/business/moneybox/2014/08/australia_businesses_get_to_vote_sydney_conservatives_want_it_to_be_required.html>; Emma Partridge, 'Ratepayers Foot $12m Bill for Businesses to Vote in City of Sydney Elections', *The Sydney Morning Herald* (online), 31 July 2015 <https://www.smh.com.au/nsw/ratepayers-foot-12m-bill-for-businesses-to-vote-in-city-of-sydney-elections-20150731-gioqwh.html>; Ben Raue, 'City of Sydney Council Election: Business Vote the Latest Battleground in Long War', *The Guardian* (online), 5 September 2016 <https://www.theguardian.com/australia-news/2016/sep/05/city-of-sydney-council-election-business-vote-the-latest-battleground-in-long-war>.

the City of Sydney is just one example of a much broader understudied phenomenon. There is no existing comprehensive nationwide catalogue and analysis of the legislation that underpins this phenomenon.

This article fills the gap in the literature by providing an analysis of legislation across the country. Part II provides a concise overview of the historical context in Britain and in Australia. Part III is the central contribution of the article, describing and analysing the legislation across the six Australian states. Part III is designed to accurately convey the complexity and lack of uniformity of local government franchises within and across the states. While this article's primary goal is to analyse the legislation as it stands today, in Part IV I outline the case for reform of voting rights at local government elections. The argument developed in Part IV is that, whenever some voters have more votes than others, there will be concerns about inequality. More precisely, there will be concerns that property owners and business owners are afforded a greater democratic say than other voters in determining the direction of a significant element of Australia's system of government.

In other Australian contexts, the possibilities of plural voting or a franchise based on property qualifications have been described as 'conspicuously undemocratic',[4] 'anachronistic',[5] and, with respect to the franchise for federal elections, contrary to the *Commonwealth Constitution*.[6] Plural voting in elections for the House of Representatives or the Senate is 'prohibited' by the *Commonwealth Constitution*,[7] and has been abolished at the state level since the early 1970s.[8] In the United Kingdom, from which so much of our public law was inherited, non-residence-based voting at local elections was abolished in 1969.[9] In Queensland, it was abolished for local elections in 1921.[10] Conveniently, therefore, there is already a model for reform in New South Wales, Victoria, Western Australia, South Australia, and Tasmania: the franchise that has been in place in Queensland for many decades. It is time for the other states to catch up.

4 *Rowe v Electoral Commissioner* (2010) 243 CLR 1, 116 [365] (Crennan J).

5 *McGinty v Western Australia* (1996) 186 CLR 140, 281 (Gummow J).

6 *Roach v Electoral Commissioner* (2007) 233 CLR 162, 187 [47] (Gummow, Kirby, and Crennan JJ); see also *A-G (Cth) ex rel McKinlay v Commonwealth* (1975) 135 CLR 1, 69 (Murphy J); *McGinty v Western Australia* (1996) 186 CLR 140, 222 (Gaudron J).

7 *A-G (Cth) ex rel McKinlay v Commonwealth* (1975) 135 CLR 1, 18 (Barwick CJ); see *Commonwealth Constitution* s 30.

8 Alexander Reilly and Tiziana Torresi, 'Voting Rights of Permanent Residents' (2016) 39 *University of New South Wales Law Journal* 401, 407.

9 *Representation of the People Act 1969* (UK) c 15, s 15; see Part II(A) of this article, which notes the singular exception of the City of London. 'Residence-based voting' is used here to refer to the form of franchise which operates in Australia for state and federal elections, in which the franchise is linked to residence in the relevant area or jurisdiction: see, eg, *Commonwealth Electoral Act 1918* (Cth) s 93. 'Property qualification' is used to refer to any form of franchise in which voting rights are linked to, for example, ownership, occupation, or lease of property, rather than to residence.

10 *Local Authorities Acts Amendment Act 1920* (Qld) s 22; see Part II(C) of this article.

II HISTORICAL CONTEXT

In this Part, I provide a short historical overview of the ways in which local government, and the local government franchise, developed in Britain and in Australia. The goal here is not to provide a comprehensive history of local government. Instead, this Part simply identifies the historical link between ratepaying and the franchise and charts the move away from that link in the United Kingdom and Queensland.

A United Kingdom

The British experience shaped the development of local government, and the development of the franchise, in early Australia. The 20th century reform of the British local government franchise also provides a useful contrast to subsequent Australian developments. In providing an overview of the British history, there are thus two interwoven threads: the history of the development of local government and that of the franchise. For present purposes, a concise overview of these two threads will suffice.

In the United Kingdom, 'institutions of local government … were not the outcome of any planned concept … They had grown, haphazard, out of the institutions of the previous centuries'.[11] This meant, among other things, that institutions of local government predated the development of representative democracy: 'Local government based upon parishes, boroughs, and the functions of the Justices of the Peace existed for hundreds of years before the idea of democratically elected authorities emerged in the nineteenth century'.[12]

Watt has noted that, in Britain, '[i]n early times the right to vote was not seen as a "human right"; it was seen as a right affixed to the ownership of property'.[13] Thus the parliamentary franchise was long linked to property ownership and provided for the possibility of plural voting (for example, plural voting for those who occupied business premises in a different parliamentary constituency from their residence, or for graduates of Oxford and Cambridge).[14] With respect to parliamentary elections, the *Representation of the People Act 1918*, 9 Geo 5, c 64 'marked the victory of the Radical principle "one man, one vote", except for the University seats and a second vote for business premises, both of which survived until' the *Representation of the People Act 1948*, 13 Geo 6, c 65.[15]

The victory of 'one person, one vote' was slower at the local level in Britain than at the national level. Well into the 20th century, the local government

11 Bryan Keith-Lucas and Peter G Richards, *A History of Local Government in the Twentieth Century* (Allen & Unwin, 1978) 12.

12 Ian Leigh, *Law, Politics, and Local Democracy* (Oxford University Press, 2000) 5.

13 Bob Watt, *UK Election Law: A Critical Examination* (Glass House Press, 2006) 34.

14 See, eg, ibid 35–46, citing, inter alia, *Ashby v White* (1703) 2 Ld Raym 938, 950–1; 92 ER 126, 134–5 (Holt CJ); Hugh Fraser, *The Law of Parliamentary Elections and Election Petitions* (Sweet & Maxwell, 3rd ed, 1922); Information Office, House of Commons, 'The House of Commons and the Right to Vote' (Factsheet G1 General Series, August 2010) 5 <https://www.parliament.uk/documents/commons-information-office/g01.pdf>.

15 A J P Taylor, *English History 1914–1945* (Clarendon Press, 1965) 94.

franchise proceeded on the basis that '[t]he right to make local decisions was restricted to those who helped to meet the burden of local expenditure'.[16] As Keith-Lucas and Richards put it, the franchise

> was still based on the conception that it was the ratepayer who should control the local authority – a doctrine that led inevitably to a great emphasis on economy by councillors who saw themselves as essentially trustees of the rate fund. Long after the property qualifications had been abolished for voting for Parliament, the local government vote was denied to all except the occupier of rateable property and his wife (or her husband) …[17]

Not until the *Representation of the People Act 1948* were residents entitled to vote in local government elections simply by virtue of being residents; thereafter the franchise consisted of both residents and 'non-resident ratepayers'.[18] That reform came with some restrictions on plural voting: 'at Local Government elections a voter may have either a residential or non-residential qualification, but may not vote more than once in the same electoral area … or at an ordinary election, in more than one electoral area of a local government area'.[19]

This general position remained until the significant reforms of the *Representation of the People Act 1969* (UK) c 15, which stated in section 15: 'The non-resident qualification for voting at local government elections, and the property qualification … for election to or membership of a local authority, are hereby abolished'.[20]

Since 1969, therefore, the franchise at local government elections has been limited to residents, with the consequent elimination of plural voting.[21] The 1969 reforms did encounter some opposition at the time. One Conservative Party Member of Parliament, Peter Walker, warned ominously that

> [i]t is worth recalling that we lost some colonies in America on the basis of taxation without any form of representation. If the Clause goes through in its

16 Keith-Lucas and Richards, above n 11, 93.

17 Ibid 19: the post-war change came about 'due to chance rather than to policy'. That is, because of circumstances arising out of the way registers of parliamentary and local electors were maintained during World War II, and the post-War adoption of the parliamentary register of electors for local election purposes: at 19–20.

18 Ibid 20.

19 F H Smith, *The Law Relating to the Registration of Electors* (Hadden, Best & Co, 1949) 10–11.

20 See, eg, Keith-Lucas and Richards, above n 11, 20.

21 The one exception to this principle is the small but historically significant City of London (not to be confused with the Mayor of London or the London Assembly, which have a much larger geographical jurisdiction), for which elections are governed by a mixture of general legislation, 'custom', and 'local Acts': LexisNexis Butterworths, *Halsbury's Laws of England*, vol 71 (at 2013) 2 The London Borough Councils and the City of London Corporation, '(1) Authorities' [24]; Malcolm Matson, 'The Last Rotten Borough' (Discussion Paper No 39, Fabian Society, 1997); see also *City of London (Ward Elections) Act 2002* (UK) c 6. The City of London's status may be explained, in part, by its ancient origins and its extremely low residential population: with a residential population under 10 000 people, it is approximately 20 times *smaller* than the City of Sydney's residential population: cf Department of Built Environment, 'City of London Resident Population: Census 2011: Introduction' (Report, City of London Corporation, November 2012) 1 <https://www.cityoflondon.gov.uk/services/environment-and-planning/planning/development-and-population-information/Documents/census-information-reports-introduction-november-2012.pdf>; City of Sydney, *The City at a Glance* (June 2015) <https://www.cityofsydney.nsw.gov.au/learn/research-and-statistics/the-city-at-a-glance>. For a recent overview of the property franchise in other jurisdictions, see Ng et al, above n 2.

> present form, we shall have owners of properties in localities making a very considerable contribution to the rates, depending to a large extent on the services provided, but having no right to cast a vote for the council.[22]

Despite Walker's concern, which reflected the historical view of councils as 'trustees of the rate fund',[23] the general position created by the 1969 reforms has remained in place for almost half a century. It is also worth noting that recent figures indicate that rates (or equivalents) provide an average of between 30 and 40 per cent of council income in both England and Australia today.[24]

B Australia

Given what is to follow in Part III, the overview of the Australian historical background can be concise.[25] With post-1788 governments and administrators not recognising existing indigenous legal, customary, and governance structures, local government in Australia developed after 1788 through a mixture of local improvisations and British inspiration. In that context, historical development of local government differed from colony to colony, and then, after Federation, from state to state. In some states, the growth of local government was the product of grassroots demand by the people; in others, local government was imposed by the colonial governments.[26] Larcombe notes the extent to which the 'penal nature' of different colonies affected the origins and development of local government in those colonies.[27]

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22 United Kingdom, *Parliamentary Debates*, House of Commons, 10 December 1968, c 293.

23 Keith-Lucas and Richards, above n 11, 19; cf Ng et al, above n 2, 224 ff.

24 See, eg, Australian Bureau of Statistics, 'Government Finance Statistics, Australia, 2014–15' (Cat No 5512.0, 26 April 2016) table 339 <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/5512.02014-15>; Department for Communities and Local Government (UK), 'Local Authority Revenue Expenditure and Financing: 2014–15 Final Outturn, England' (Statistical Release, 19 November 2015) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/497079/Revised_RO_Final_Outturn_2014-15_Statistical_Release.pdf> (figures are for England rather than the United Kingdom); cf Kiss, above n 2, 6.

25 The focus of this section is on local government in Australia in the period after January 1788. But see *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141, 165–98 (Blackburn J); *Mabo v Queensland [No 2]* (1992) 175 CLR 1, 17–19 (Brennan J); Ulla Secher, *Aboriginal Customary Law: A Source of Common Law Title to Land* (Hart Publishing, 2014) 20, 28–32; Sean Brennan et al, *Treaty* (Federation Press, 2005) 50–4; Henry Reynolds, *The Law of the Land* (Penguin, 3rd ed, 2003); Heather McRae et al, *Indigenous Legal Issues: Commentary and Materials* (Lawbook, 4th ed, 2009) 138–40.

26 M A Jones, *Local Government and the People: Challenges for the Eighties* (Hargreen Publishing, 1981) ch 3; H E Maiden, *The History of Local Government in New South Wales* (Angus and Robertson, 1966) ch 5; J Power, R Wettenhall and J Halligan, 'Overview of Local Government in Australia' in J Power, R Wettenhall and J Halligan (eds), *Local Government Systems of Australia* (Australian Government Publishing Service, 1981) 1, 9–10; Malcolm A Bains and N T G Miles, 'New South Wales' in J Power, R Wettenhall and J Halligan (eds), *Local Government Systems of Australia* (Australian Government Publishing Service, 1981) 123, 129–39; Judy McNeill, 'Local Government in the Australian Federal System' in Brian Dollery and Neil Marshall (eds), *Australian Local Government: Reform and Renewal* (Macmillan Education Australia, 1997) 17, 18–20.

27 F A Larcombe, *The Origin of Local Government in New South Wales 1831–58* (Sydney University Press, 1973) 5. Larcombe cites a statement from the Governor of New South Wales made in the Legislative Council that: 'Sydney, bloated as she is with wealth, is so much tainted by her convicts that the people are afraid even to take the management of their own streets and roads, and are everywhere startled with the vision of an emancipist in an aldermanic gown': at 50–1, quoting *Supplement to the Sydney Herald*, 21 August 1840, 1.

Initially, what would later become the responsibilities of local government were dealt with in a series of subject-specific laws passed by the New South Wales Legislative Council: for example, a dividing fences Act in 1828, a dog nuisance Act in 1830, and a street alignment Act in 1834.[28] The first Australian local government election was that held for the Adelaide Municipal Council on 30 October 1840; the franchise was granted to 'adult males who had resided in the colony [of South Australia] for at least six months and owned or rented land, houses, warehouses, counting-houses or shops with an annual value of £20 within the incorporated area'.[29] As Larcombe notes, this election 'was not only the first local election but the first for any form of elective authority ever held in Australia'.[30] Shortly afterward, experiments in government by local authority began elsewhere. In January 1841, for example, the first Parish Roads Trust was elected in New South Wales; the Parish Roads Trust scheme 'provided for a system of road trusts elected triennially by the owners of land through which or within three miles of which, a parish road passed'.[31] The existence of a form of property-based franchise at the local government level was thus evident from the beginning. Although local government structures developed in different ways in different colonies (and then states), McNeill notes that 'they all ended up with a large range of similar and mostly minor functions'.[32]

Over the course of the 20th century, however, the role of local governments evolved. In the words of the Joint Select Committee on Constitutional Recognition of Local Government:

> [At the beginning of the 20th century,] local government was responsible for ensuring that settlements had access to markets (roads) and that they were hygienic (rubbish removal). Back then, these 'property' services were funded simply by levies on property (rates).
>
> However, the days of local government doing just roads, rates and rubbish are long gone. Local governments are now recognised by the Commonwealth, state and territory governments as ideally positioned to both deliver services and to advocate for their communities. Over the past century, local governments have progressively expanded their roles and responsibilities, and this trend will only continue.[33]

Local governments may thus be understood as a significant element in Australia's contemporary democracy. In the words of the Australian Local Government Association ('ALGA'), local government is

> the third level of government in the Australian Federation and is responsible for the governance of the local municipality and the provision of a range of critical

28 Maiden, above n 26, 31–6.

29 Larcombe, above n 27, 49.

30 Ibid 50.

31 Ibid 54–5. See also Maiden, above n 26, 36–9; A W Greig, *Notes on the History of Local Government in Victoria* (Melbourne University Press, 1925) 9–14.

32 McNeill, above n 26, 20.

33 Joint Select Committee on Constitutional Recognition of Local Government, Parliament of Australia, *Final Report on the Majority Finding of the Expert Panel on Constitutional Recognition of Local Government* (March 2013) v <https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_representatives_Committees>. On the roles of local government, see also Jones, above n 26, ch 2.

> services and infrastructure that contribute to the quality of life and wellbeing of citizens across Australia.[34]

While ALGA has every reason to emphasise the importance of local government, similar views have been expressed at the state level. The *Constitution Act 1975* (Vic), for example, states that

> [l]ocal government is a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.[35]

The New South Wales legislation entrusts councils with a broad range of democratic and policy responsibilities, and expects councils to facilitate 'local communities that are strong, healthy and prosperous'.[36] Included among the 'general principles [that] apply to the exercise of functions by councils' are that:

> (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
>
> …
>
> (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
>
> (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
>
> (g) Councils should work with others to secure appropriate services for local community needs.
>
> (h) Councils should act fairly, ethically and without bias in the interests of the local community.[37]

Local governments today have come a long way from the Parish Road Trusts of the 1840s. Conceivably, it may once have made sense for Australian local governments to be regarded, as their British equivalents once were, as 'trustees of the rate fund' looking out for the interests of ratepayers.[38] Any such view is, I suggest, difficult to sustain in light of the changed role of local governments in Australia.[39] But, as Part III will make clear, the view that property owners and ratepayers have special rights with respect to local government has persisted in five Australian states throughout the 20th century and into the 21st. The details of the legislation underpinning this situation will be the subject of Part III, but it is first worth briefly examining the historical context for Queensland's different approach in this area.

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34 Australian Local Government Association, *Strengthening Democratic Processes* (2014) <https://alga.asn.au>. In 1973, ALGA's predecessor organisation described local government as 'the democratically elected political unit closest to the people'; in 1990, ALGA urged that 'democratic local self-government is established by the inalienable right of people to control their own affairs in their own communities': Hornby, above n 2, 54, 57.

35 *Constitution Act 1975* (Vic) s 74A(1). See also *Local Government Act 1989* (Vic) ss 1(1), (4).

36 *Local Government Act 1993* (NSW) s 8.

37 *Local Government Act 1993* (NSW) s 8A(1).

38 Keith-Lucas and Richards, above n 11, 19.

39 And also in light of the significant non-rates funding on which contemporary Australian local governments rely: see above n 24 and accompanying text.

C Reform in Queensland

In 1921, Queensland abolished non-residence-based voting at local government elections with the *Local Authorities Acts Amendment Act 1920* (Qld).[40] The change was introduced by the Theodore Labor Government, which also abolished Queensland's Legislative Council.[41] Speaking in favour of the Local Authorities Acts Amendment Bill 1920 (Qld) in the Legislative Assembly, William McCormack, the Home Secretary, said:

> The extension of the [local government] franchise will, in my opinion, be a wise thing. It will enable the local authorities to give more attention to local affairs than is given under a centralised system of government. I am a great believer in a community having control of their domestic affairs, and there is only one way in which that can be done, and that is by enabling the people to take part in local authority government. Everyone in the community who has reached adult age should have a right to vote in electing the men who are going to govern the affairs of the community.[42]

The Bill was met with some opposition. Opposing the extension of the franchise in the Legislative Council (still in existence at the time), Thomas Hall warned, among other things, that it would 'indirectly affect the stability of the community'.[43] But in assessing the opposition arguments against the proposal in the Legislative Assembly, McCormack noted that they bore striking similarity to arguments that had been made against reform of the franchise at the *state* level in previous decades:

> it is a remarkable coincidence that almost identical arguments were used from 1894 till 1904 against the extension of the franchise to the whole of the people in connection with State elections. The main contention was, of course, that a person without property had no great interest in the country.[44]

Giving the second reading speech in the Legislative Council, Alfred Jones, the Secretary for Mines, said:

> We must recognise that local government is a form of government which affects every citizen within the particular local authority area; and I believe that all governing bodies should be elected on the broad franchise of one adult one vote. Probably Australia has led the world in connection with the adoption of that principle.[45]

Almost a century later, Jones' speech remains striking, not least because every other Australian state has failed to adopt the principle of equality that he regarded as so important in 1920.[46]

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40 On the history of local government in Queensland more generally, see C P Harris, *Local Government and Regionalism in Queensland: 1859 to 1977* (Australian National University, 1978) ch 1; D Tucker, 'Queensland' in J Power, R Wettenhall and J Halligan (eds), *Local Government Systems of Australia* (Australian Government Publishing Service, 1981) 373, 379–87.

41 See Ross Fitzgerald, *'Red Ted': The Life of EG Theodore* (University of Queensland Press, 1994) ch 4; see also at 65.

42 Queensland, *Parliamentary Debates*, Legislative Assembly, 29 November 1920, 333.

43 Queensland, *Parliamentary Debates*, Legislative Council, 22 December 1920, 974.

44 Queensland, *Parliamentary Debates*, Legislative Assembly, 29 November 1920, 327.

45 Queensland, *Parliamentary Debates*, Legislative Council, 22 December 1920, 973.

46 For more contemporary analysis of equality in a democratic society, see Part IV of this article.

III LEGISLATION ON THE FRANCHISE AT LOCAL GOVERNMENT ELECTIONS IN AUSTRALIA

Under Australia's constitutional arrangements, the responsibility for legislating on the structure and organisation of local government is that of the states.[47] The legislation governing the franchise at local government elections thus differs from state to state, and, in some cases, differs within states. In some states, a different regime applies to the capital city's City Council, as in South Australia, Victoria, and New South Wales. The focus of this article is on the six states; the Australian Capital Territory has no comparable local government system,[48] and the Northern Territory's relevant legislation is designed similarly to Queensland's model.[49]

This Part is principally descriptive, drawing together all of the relevant legislation across the states in a way that has not been done before. This description, paired with the analysis below, demonstrates the extent to which five states have local electoral laws providing for varying combinations of plural voting, voting based on property ownership or occupation, and voting on behalf of corporations. The law is current to 1 May 2017.

With the exception of Queensland, the state legislation on these matters is characterised by idiosyncratic complexity and, sometimes, rather opaque drafting. While most of the states have adopted some form of property-based franchise, some form of votes for corporations, and some form of plural voting, the details differ in significant ways. Nevertheless, a generalised description may be offered of the position in the non-Queensland states; specific examples of these provisions will follow below.

A number of generalised observations may be made: first, being enrolled on the state or Commonwealth electoral roll at an address in a local government area will generally entitle a person to vote in the relevant local government area. Second, owning or occupying property in a local government area will generally entitle the owner or occupier to vote in that local government area, especially if the owner or occupier is not also a resident. Third, where the owner or occupier is a corporation, the legislation will provide a process by which a natural person (or persons) may vote on its behalf. Fourth, where the owner or occupier owns or occupies multiple properties in a particular local government area, the legislation will provide a limit on the number of votes available to the owner or occupier in that capacity. Fifth, where the owner or occupier of property resides in the same local government area, there will often be some form of limitation on their ability to vote in multiple capacities within that area. Sixth, there may be some differentiation between voters automatically entitled to be enrolled to vote and those who must apply to be enrolled, and differentiation on whether voting is

47 See, eg, George Williams, 'The Local Government Referendum' (Speech delivered at the National General Assembly of Local Government, Canberra, 18 June 2013) 3 <https://alga.asn.au/site/misc/alga/downloads/events/2013NGA/George_Williams.pdf>; McNeill, above n 26, 21–4.

48 *Australian Capital Territory (Self-Government) Act 1988* (Cth) s 37, sch 4.

49 See *Local Government Act 2008* (NT) ss 87–8; *Electoral Act 2004* (NT) ss 20–1; *Northern Territory (Self-Government) Act 1978* (Cth) s 14.

compulsory for different categories of voters.[50] This kaleidoscope of provisions operates in different ways in different states, as Table 1 goes some way to demonstrating.

Table 1: Selected features of the law of voting rights at local government elections

	Qld	Tas	SA	WA	Victoria	NSW
Resident in the relevant area and entitled to vote at state/ federal elections	Yes	Yes (and for some residents who may not meet state/federal criteria)	Yes (and for some residents who may not meet state/federal criteria)	Yes	Yes (and for some residents who may not meet state/feder al criteria)	Yes
Votes for resident ratepaying property owners or occupiers in the area (or representative thereof)	No	Yes (if a nominee of a property-owning corporation)	Yes (if a nominee of a property-owning corporation or group, but may only vote in one capacity)	Yes (if a nominee of a property-owning corporation or group, but may only vote in one capacity)	No May only be enrolled in their capacity as a resident	No May only be enrolled in their capacity as a resident
Votes for non-resident ratepaying property owner or occupier in the area (or representative thereof)	No	Yes	Yes	Yes	Yes	Yes
Votes for corporations	No	Yes	Yes	Yes	Yes	Yes
Possibility of plural voting	No	Yes Types 1 and 2	Yes Type 2	Yes Types 2 and 3	Yes Statewide: Types 2 and 3 City of Melbourne: Types 2 and 3	Yes Statewide: Type 2 City of Sydney: Types 2 and 3

50 Compare, eg, *Local Government Act 1989* (Vic) ss 13 and 14. On compulsory voting see, eg, *City of Sydney Act 1988* (NSW) s 22; cf *Local Government Act 1993* (NSW) s 286. This article does not devote attention to this distinction.

One point of clarification is worthwhile on the nature of plural voting. It is possible to identify several different types of plural voting evident in the legislation of the five non-Queensland states. What I will call 'Type 1 plural voting' involves an individual natural person having the ability to cast more than one vote in a particular election for a local government area or part thereof. 'Type 2 plural voting' exists where an individual or corporation may cast a vote in one local government area and then also cast a vote in one or more additional local government areas elsewhere in the state. 'Type 3 plural voting' exists when the ownership or occupation of a property generates multiple votes, which may then be exercised by different individuals.

A Queensland

In Queensland, the franchise at local government elections works in much the same way as at Queensland state elections and federal elections. Only natural persons can vote; enrolment and voting rights at local government elections are explicitly linked to enrolment and voting rights at state and federal elections. No person may vote more than once at the same local government election, or vote in more than one local government area.[51] Voting at Queensland local government elections 'is compulsory for electors'.[52]

The *Local Government Electoral Act 2011* (Qld) identifies who is entitled to vote at a local government election in Queensland: in short, persons enrolled on the 'voters roll' are entitled to vote.[53] Such a roll must be compiled for the local government area (or for the relevant division of the local government area),[54] and must be based on 'an electoral roll'.[55] For these purposes, 'electoral roll' means 'an electoral roll kept under the *Electoral Act 1992* [(Qld)], section 58'.[56]

The *Electoral Act 1992* (Qld) is primarily concerned with state elections. Section 58 of the Act, accordingly, requires the Electoral Commission of Queensland to 'keep an electoral roll for each electoral district' that 'contain[s] information in relation to the persons entitled to be enrolled for the electoral district'. The reference to 'electoral district' indicates that the 'electoral roll' is linked to the electorates in Queensland's Legislative Assembly.[57] Section 64 of the *Electoral Act 1992* (Qld) further indicates that entitlement to be 'enrolled for an electoral district' arises if a person 'lives in the electoral district and has lived in it for the last month' and is 'entitled to be enrolled under the Commonwealth Electoral Act for the purposes of that Act in its application in relation to an election within the meaning of that Act'.[58] Section 93 of the *Commonwealth*

51 *Local Government Electoral Act 2011* (Qld) s 64(2).
52 *Local Government Electoral Act 2011* (Qld) s 66.
53 *Local Government Electoral Act 2011* (Qld) s 64(1)(a). Various savings provisions also apply: ss 64(1)(b)–(c). Persons serving a sentence of imprisonment are not entitled to vote: s 64(3).
54 *Local Government Electoral Act 2011* (Qld) s 17(1).
55 *Local Government Electoral Act 2011* (Qld) s 17(2).
56 *Local Government Electoral Act 2011* (Qld) sch (definition of 'electoral roll').
57 See also *Electoral Act 1992* (Qld) s 34.
58 Section 64 also sets out other ways in which the entitlement to enrolment may arise and works; they are less relevant for present purposes. The links between the Queensland and Commonwealth electoral rolls

Electoral Act 1918 (Cth), in turn, limits enrolment to 'persons' who, inter alia, 'have attained 18 years of age'. In this way, the franchise at local government elections in Queensland is directly linked to the state franchise, which is, in turn, directly linked to the Commonwealth franchise.

There is no additional or alternative route to enrolment to vote at a local government election in Queensland: paying rates, owning property, or occupying property are not relevant to determining the franchise. No plural voting exists. It is not the same elsewhere.

B Tasmania

Tasmanian law provides for a franchise based in part on residence, and in part on property ownership or occupation. Tasmania allows for votes for corporations and for Type 1 plural voting and Type 2 plural voting. Voting at Tasmanian local government elections is by postal voting and is voluntary.[59]

The *Local Government Act 1993* (Tas) requires the general manager of a council to keep 'an electoral roll in respect of each [local government] electoral area'.[60] Section 254 of the Act sets out three categories of persons who are entitled to be enrolled on the local government electoral roll. First, persons who are enrolled on the State electoral roll at an address within the local government area are entitled to be enrolled.[61] Second, persons not covered by the first category are entitled to be enrolled if the person 'is an owner or occupier of land in the electoral area', is over 18, and is not in prison or subject to mental health orders.[62] The combination of these first two categories thus facilitates Type 2 plural voting. Third, a person is entitled to be enrolled if the person has been nominated 'to vote in respect of the electoral area on behalf of a corporate body' where that body corporate owns or occupies land in the area.[63]

The provisions establishing the nomination process for this third category state that a 'corporate body which owns or occupies any land in a municipal area is entitled to nominate one person in any municipal area to vote on its behalf at an election in that municipal area'.[64] The legislation requires that a nominated person be an adult, not imprisoned, not nominated with respect to a different corporate body, and not subject to mental health or guardianship orders.[65] It is

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are reinforced by *Electoral Act 1992* (Qld) s 62, which allows for Commonwealth–state cooperation in preparing, altering, or revising electoral rolls.

59 See *Local Government Act 1993* (Tas) pt 15 div 6. Kiss has noted the connection between non-resident voting and postal voting: 'where non-resident property-based voting is part of the electoral system, universal postal voting makes it easier for those property-based voters to vote': Kiss, above n 2, 9. On the history of local government in Tasmania generally, see K R von Stieglitz, *A History of Local Government in Tasmania* (Telegraph Printery, 1958); R Chapman, 'Tasmania' in J Power, R Wettenhall and J Halligan (eds), *Local Government Systems of Australia* (Australian Government Publishing Service, 1981) 705, 711–18.

60 *Local Government Act 1993* (Tas) s 258. 'Electoral area' is defined in s 3.

61 *Local Government Act 1993* (Tas) s 254(1).

62 *Local Government Act 1993* (Tas) s 254(2). This category would capture non-citizens who own or occupy land in the electoral area, as noted by Reilly and Torresi, above n 8, 404.

63 *Local Government Act 1993* (Tas) ss 254(3), 255; cf Hornby, above n 2, 64–5.

64 *Local Government Act 1993* (Tas) s 255(1).

65 *Local Government Act 1993* (Tas) s 255(3)(c).

also made clear that a 'corporate body may only nominate one person to vote on its behalf at an election in a municipal area regardless of whether it owns or occupies land in several locations in that municipal area'.[66]

These provisions are qualified by section 256 of the *Local Government Act 1993* (Tas), which indicates that, at any given election for a municipal area, any given voter 'has *no more than 2 votes*'.[67] Thus, for example, at a particular election, a person may be entitled to vote in her capacity as a resident, and also to vote as the nominee of a corporate body occupying land in the same municipal area. This allows for both Type 1 plural voting and Type 2 plural voting.

C South Australia and the City of Adelaide

South Australian law provides for a property-based franchise, including votes for corporations, and for Type 2 plural voting. South Australia operates two similar systems of local government electoral law: one applicable to the City of Adelaide, and the other to the rest of South Australia's local governments. There are thus two relevant pieces of legislation: the *Local Government (Elections) Act 1999* (SA) and the *City of Adelaide Act 1998* (SA).[68] For present purposes, the relevant Adelaide provisions closely follow the state-wide provisions, and so the principal focus is on the state-wide provisions.[69] Voting at local government elections in South Australia is voluntary, and done by postal voting.[70]

Four broad categories of persons may enrol to vote at South Australian municipal elections.[71] First, persons may enrol to vote if they are enrolled to vote on the State electoral roll for a residence within the relevant area.[72] The second category captures several distinct sub-categories: an adult resident in the area for at least one month,[73] a ratepayer who is the sole owner of rateable property,[74] and a ratepayer who is the sole occupier of rateable property and is not resident in the

66 *Local Government Act 1993* (Tas) s 255(7).

67 *Local Government Act 1993* (Tas) s 256 (emphasis added). This is applicable both to elections in respect of one municipal area and to elections for a divided municipal area: ss 256(1)–(2).

68 As a general matter, these two Acts, together with the *Local Government Act 1999* (SA), are to 'be read together and construed as if the three Acts constituted a single Act': *City of Adelaide Act 1998* (SA) s 5(1). The Adelaide-specific legislation operates 'in substitution for' the provisions relating to enrolment and entitlement to vote in the *Local Government (Elections) Act 1999* (SA): *City of Adelaide Act 1998* (SA) sch 1 cl 1.

69 Differences between the two regimes are noted where they arise.

70 *Local Government (Elections) Act 1999* (SA) s 37(1). On the history of local government in South Australia, see J Robbins, 'South Australia' in J Power, R Wettenhall and J Halligan (eds), *Local Government Systems of Australia* (Australian Government Publishing Service, 1981) 571, 575–8.

71 *Local Government (Elections) Act 1999* (SA) s 14. See also *City of Adelaide Act 1998* (SA) sch 1 cls 2–3; *Local Government (Elections) Act 1999* (SA) s 15.

72 *Local Government (Elections) Act 1999* (SA) s 14(1)(a). See also s 14(1a); *Electoral Act 1985* (SA) s 29.

73 *Local Government (Elections) Act 1999* (SA) s 14(1)(ab)(i). At first glance, s 14(1)(ab)(i) appears to add little to what is provided for by s 14(1)(a). Two differences may be noted: first, that, unlike the requirements for enrolment at state elections that form the basis of s 14(1)(a), s 14(1)(ab)(i) allows for enrolment if the person has been resident for one month *even if* the relevant place of residence is *not* the person's principal place of residence: cf *Electoral Act 1985* (SA) ss 14(1)(b), 29(1)(a)(iii). Second, s 14(1)(ab)(i) would capture non-citizens, as noted by Reilly and Torresi, above n 8, 404.

74 *Local Government (Elections) Act 1999* (SA) s 14(1)(ab)(ii).

property.[75] Third, 'a body corporate' is entitled to be enrolled 'if it is a ratepayer in respect of rateable property within the area or ward and is the sole owner or sole occupier of the rateable property'.[76] Fourth, 'a group of persons' is entitled, on application, to be enrolled 'as a group on the voters roll' if:[77]

- 'the members of the group are all ratepayers in respect of rateable property within the area or ward';[78] and
- 'the members of the group are joint owners, owners in common or joint occupiers of the rateable property';[79] and
- 'at least one member of the group (being a natural person of or above the age of majority or a body corporate) is *not* enrolled on the relevant voters roll under [the preceding three categories], and no member of the group is enrolled on the relevant voters roll … as a resident in respect of the rateable property';[80] and
- 'no member of the group who is an occupier of the rateable property but not an owner is a resident in respect of the rateable property'.[81]

This category thus allows groups of ratepayers who own or occupy a rateable property together to enrol to vote *as a group*, provided that at least one member of the group is not otherwise enrolled and that no member of the group is a resident of the relevant property.[82]

In the case of the third and fourth categories, the legislation makes clear that a 'natural person is entitled to vote at an election or poll for a body corporate, or group, which has its name on the voters roll if the natural person is the designated person on the voters roll for the body corporate, or group'.[83] To facilitate this process, the voters roll must include 'the full name of the body corporate or group and the full name, residential address and date of birth of the designated person for the body corporate or group'.[84] Such a 'designated person' must be a natural adult person who is

75 *Local Government (Elections) Act 1999* (SA) s 14(1)(ab)(iii).

76 *Local Government (Elections) Act 1999* (SA) s 14(1)(b). Note that the body corporate itself is enrolled.

77 See *Local Government (Elections) Act 1999* (SA) ss 14(1)(c), (6), (7). See also *City of Adelaide Act 1998* (SA) sch 1 cls 2(1)(c), (5).

78 *Local Government (Elections) Act 1999* (SA) s 14(1)(c)(i).

79 *Local Government (Elections) Act 1999* (SA) s 14(1)(c)(ii).

80 *Local Government (Elections) Act 1999* (SA) s 14(1)(c)(iii) (emphasis added).

81 *Local Government (Elections) Act 1999* (SA) s 14(1)(c)(iv).

82 *Local Government (Elections) Act 1999* (SA) s 14(6) states that '[t]he chief executive officer may determine the name of a group for the purposes of the voters roll'; s 14(7) indicates that, on the roll, '[t]he name of a group must include the word "Group" at the end'. A slight variation is evident in *City of Adelaide Act 1998* (SA) sch 1 cl 2(5), where the group itself may also 'nominate' a name for itself.

83 *Local Government (Elections) Act 1999* (SA) s 16(2). A different approach is adopted in *City of Adelaide Act 1998* (SA) sch 1 cls 4(4)(b), 18(1)(b)(iii), whereby a person may declare, as part of the mandated postal voting process, 'that he or she is eligible to vote and is acting on behalf of the body corporate or group'.

84 *Local Government (Elections) Act 1999* (SA) s 15(2)(b). See also *City of Adelaide Act 1998* (SA) sch 1 cls 4(4)(b), 18(1)(b)(iii).

(a) in the case of a body corporate – an officer of the body corporate who is authorised to act on behalf of the body corporate for the purposes of voting; or

(b) in the case of a group – a member of the group, or an officer of a body corporate that is a member of the group, who is authorised to act on behalf of the group for the purposes of voting …[85]

A limitation on Type 1 plural voting is provided for: a 'natural person may only vote in 1 capacity at an election or poll'.[86] The legislation may allow a more indirect form of Type 1 plural voting: a person who lives in a local government area *and* is also, for example, a member of a 'fourth category' group in that area, may effectively have more than one vote, insofar as such a person would have their resident's vote, and may have a say in directing the vote of the group's nominee.

D Western Australia

Western Australian law provides for a property-based franchise including votes for corporations, and for Type 2 plural voting and Type 3 plural voting. Voting is not compulsory at Western Australian local government elections.[87]

The relevant legislation is the *Local Government Act 1995* (WA).[88] The Act establishes two separate electoral rolls. First, a person may be enrolled to vote on the 'residents roll' if they are enrolled on the state roll for the relevant area.[89] Second, a person may be enrolled on the 'owners and occupiers roll' if the person 'is enrolled as an elector for [state or Commonwealth elections] in respect of a residence outside' the municipal area *and* the person 'owns or occupies rateable property' in the area.[90]

The Western Australian legislation makes detailed provision for, among other things, situations in which a rateable property is owned or occupied by more than two people or by a body corporate.[91] Where a rateable property is *owned* by more than two people or by a body corporate, or is *occupied* by more than two people or by a body corporate, then for present purposes the 'owners' or 'occupiers' are whichever two non-resident people are nominated as the 'owners' or 'occupiers' by the group or the body corporate.[92] Thus the ownership of a rateable property

85 *Local Government (Elections) Act 1999* (SA) s 4(1) (definition of 'designated person').

86 *Local Government (Elections) Act 1999* (SA) s 16(10). While the section does add the caveat 'this clause does not prevent a person voting at 2 or more elections for a council held on the same day', that caveat must be understood in light of s 4(4) which defines 'election' for this purpose. See the similar provision in *City of Adelaide Act 1998* (SA) sch 1 cl 4(10): 'A natural person may only vote in 1 capacity at an election or poll for the City of Adelaide (but this clause does not prevent a person voting at 2 or more elections for the City of Adelaide held on the same day)'. Type 2 plural voting is thus not affected by these provisions.

87 On the history of local government in Western Australia, see M Wood, 'Western Australia' in J Power, R Wettenhall and J Halligan (eds), *Local Government Systems of Australia* (Australian Government Publishing Service, 1981) 645, 651–61.

88 On the election of the Lord Mayor of Perth, see *City of Perth Act 2016* (WA) s 20.

89 *Local Government Act 1995* (WA) ss 4.29(1), 4.40. See *Electoral Act 1907* (WA) pt III.

90 *Local Government Act 1995* (WA) ss 4.30(1), 4.41. See also ss 4.32–3.

91 See, eg, *Local Government Act 1995* (WA) s 4.31(1D) on what is included within 'occupation'.

92 *Local Government Act 1995* (WA) ss 4.31(1E)–(1H).

by a body corporate may generate votes for two persons nominated by that body corporate, a form of Type 3 plural voting. However, section 4.31(1H) states:

> A nomination [of this sort] applies in respect of any and all other rateable property in the district that is owned or occupied by the people or body corporate concerned.[93]

Read together with subsequent provisions about the administration of the electoral rolls, the effect of section 4.31(1H) is that any group or body corporate may have only two nominees enrolled in any given local government area *regardless* of how many properties the group or body corporate owns or occupies *and* that those nominees may be enrolled only once each in that capacity in that local government area *regardless* of how many bodies corporate may have wished to nominate the individual person as their nominee.[94]

In thinking about plural voting, section 4.66 of the *Local Government Act 1995* (WA) states that '[a]n elector is not to vote more than once at the election'.[95] This provision reinforces those outlined above, in reiterating that a person enrolled as an elector for the Legislative Assembly in respect of a residence in the district may not also be enrolled as an owner or occupier or the nominee thereof.[96] But while section 4.66 does place this limit on Type 1 plural voting, it would not prevent Type 2 plural voting; the legislation would allow a person to vote once at an election in one local government area (for example, the area in which they reside), to vote again at an election in a different local government area elsewhere in Western Australia (for example, an area in which their business owns property and in which they have been nominated by the body corporate), and to vote a third time at another election (for example, in another area in which they own a rateable holiday property).[97]

E Victoria and the City of Melbourne

Victorian law provides for a property-based franchise, votes for corporations, and for forms of plural voting.[98] Part 3 of the *Local Government Act 1989* (Vic)

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93 *Local Government Act 1995* (WA) s 4.31(1H). 'District' here means local government area: see ss 1.4, 2.1–4.

94 This construction is reinforced by *Local Government Act 1995* (WA) s 4.44: 'An elector's name is not to appear more than once on the same electoral roll'. Recall that the *Local Government Act 1995* (WA) mandates a 'residents roll' and an 'owners and occupiers roll': ss 4.40–1.

95 In this part of the Act, 'election' refers to an election for a particular local government area or part thereof: *Local Government Act 1995* (WA) ss 4.1, 4.36.

96 See also *Local Government Act 1995* (WA) ss 4.30(1)(a), 4.31(1E)–(1G).

97 With the enrolments based respectively on *Local Government Act 1995* (WA) ss 4.29(1), 4.40(3); ss 4.30(1)(a), 4.31(1G), 4.41(2); ss 4.30(1)(a), 4.41(2).

98 At the time of writing, there is a review underway of the *Local Government Act 1989* (Vic): see, eg, Department of Environment, Land, Water & Planning (Vic), 'Review of the Local Government Act 1989' (Discussion Paper, 26 August 2015) <http://www.yourcouncilyourcommunity.vic.gov.au/14184/documents/25006>; Department of Environment, Land, Water & Planning (Vic), 'Act for the Future – Directions for a New Local Government Act' (Directions Paper, 2016) <https://s3-ap-southeast-2.amazonaws.com/ehq-production-australia/7aa05ea50976225e7ee45681e4520f5cdfa2e355/documents/attachments/000/037/297/original/Act_for_the_Future_-_Directions_for_a_new_Local_Government_Act.pdf?1465442287>. On the history of local government in Victoria, see, eg, Greig, above n 31; Bernard Barrett, *The Civic Frontier: The Origin of Local Communities and Local Government in Victoria* (Melbourne University Press, 1979); M Bowman, 'Victoria' in J Power, R Wettenhall and J Halligan

governs elections at local councils in Victoria. Its provisions are closely mirrored by the *City of Melbourne Act 2001* (Vic), and so the focus here will be on the statewide legislation, with a brief examination of unique provisions in the *City of Melbourne Act 2001* (Vic) towards the end of this section.[99]

The *Local Government Act 1989* (Vic) states that a 'Council consists of its Councillors who are democratically elected in accordance with this Act',[100] and that a Council's role includes 'acting as a representative government by taking into account the diverse needs of the local community in decision making'.[101] The Victorian legislation sets out four categories of persons entitled to be enrolled to vote at local elections for these 'democratically elected' and 'representative' governments:[102]

- first, a resident entitled to vote at state elections: a person who would be an elector on the state roll with respect to an address in a ward within the municipal district;[103]
- second, non-resident owners: an adult person not captured by the first category and who is not resident in the municipal district, *but* who 'is the owner of any rateable property in the municipal district whether solely or jointly'.[104] If a particular person owns 'more than one rateable property in a municipal district', the person may only be enrolled with respect to one of those properties.[105] A non-resident owner could also hold an entitlement to vote in another local government area under section 12, opening the possibility of Type 2 plural voting;
- third, an adult person who is not captured by the preceding categories, but who 'is an owner of any rateable property in the municipal district'.[106] Given that this third category is mutually exclusive from the previous categories, it seems designed to capture property-owning residents of the municipal district who are *not* entitled to vote at state elections: for

(eds), *Local Government Systems of Australia* (Australian Government Publishing Service, 1981) 229, 235–6; Helen Harris, *The Right to Vote; the Right to Stand: The Involvement of Women in Local Government in Victoria* (Australian Local Government Women's Association (Victoria Branch), 2014).

99 For a useful recent deliberative democracy analysis of the City of Melbourne as an example of the 'tensions between the normative value of political equality and the complex representational issues of large metropolitan areas' (including analysis of the results of 'an online survey (using purposeful sampling) and semi-structured interviews'), see Ng et al, above n 2.

100 *Local Government Act 1989* (Vic) s 3B.

101 *Local Government Act 1989* (Vic) s 3D(2)(a).

102 See *Local Government Act 1989* (Vic) s 11. See also *City of Melbourne Act 2001* (Vic) s 9. Throughout it is clear that the rolls are prepared with reference to particular wards within a municipal district, since a ward affiliation must be noted even when a roll is prepared for the whole district: see, eg, *Local Government Act 1989* (Vic) s 24(3).

103 *Local Government Act 1989* (Vic) s 12(1). On qualifications for electors at the state level, see *Constitution Act 1975* (Vic) s 48; see also *City of Melbourne Act 2001* (Vic) s 9A(1). By way of context, it may be noted that, as Kiss states, in Victoria it 'was not until 1982 that residents gained the right to vote' in local elections: Kiss, above n 2, 7.

104 *Local Government Act 1989* (Vic) s 13(1)(c); see also ss 13(2)–(7); see also *City of Melbourne Act 2001* (Vic) ss 9A(3)–(5).

105 *Local Government Act 1989* (Vic) ss 13(6)–(7).

106 *Local Government Act 1989* (Vic) s 14; cf *City of Melbourne Act 2001* (Vic) s 9B(1).

example, property-owning residents who are not Australian citizens.[107] Such persons may apply to be enrolled;[108] and

- fourth, an adult person who is captured by none of the preceding categories, but who 'is the occupier of any rateable property in the municipal district … and is liable to pay the rates in respect of that rateable property' may '*apply* to be enrolled on the voters' roll in respect of that rateable property'.[109] An interaction between this category and the second and third categories is worth noting: if an occupier is enrolled with respect to a property, the occupier's enrolment will preclude any possibility of an owner being enrolled with respect to that property.[110]

For the second, third, and fourth categories, in respect of any property, only two owners or occupiers are entitled to be enrolled.[111] Where there are more than two owners of a rateable property, for example, the owners may identify which two owners are to be enrolled with respect to a property or otherwise the council's Chief Executive Officer may identify two owners based on the rate records.[112] This is a form of Type 3 plural voting.

The legislation also allows for a corporation that is an owner or occupier to appoint 'a person to represent it at Council elections to vote on its behalf'.[113] For any given council area, a corporation may only appoint one voter: a corporation may only exercise this right of appointment 'once, regardless of how many rateable properties it owns or occupies or jointly owns or occupies in the municipal district',[114] and 'may only be represented by one person under this section at a Council election in respect of the municipal district'.[115] This functions as a limitation on Type 3 plural voting. The Act requires that any corporation appointee be an adult that has consented in writing to the appointment, 'a director or company secretary' of the corporation, and not 'for any other reason entitled to be enrolled on the voters' roll in respect of the municipal district for which the appointment is made', nor already enrolled by virtue of another appointment.[116]

The Victorian legislation countenances Type 2 plural voting and a form of Type 3 plural voting, but contains a number of provisions otherwise regulating plural voting. Section 11, for example, states that:

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107 Note that citizenship is a precondition for voting in Victorian state elections, and, therefore, for qualifying under the first category: see *Local Government Act 1989* (Vic) s 12(1); *Constitution Act 1975* (Vic) s 48(1)(a); see also Reilly and Torresi, above n 8, 404.

108 On applications to enrol, see *Local Government Act 1989* (Vic) ss 11(5)–(7); see also *City of Melbourne Act 2001* (Vic) s 9.

109 *Local Government Act 1989* (Vic) s 15(1) (emphasis added). Section 15(3) provides details on what it means to be 'liable to pay the rates' for the purposes of this section; the position where there are multiple joint occupiers is addressed by ss 15(2), (4). See also *City of Melbourne Act 2001* (Vic) s 9B.

110 *Local Government Act 1989* (Vic) ss 13(3), 14(3); see also ss 15(6)–(7), 16(3).

111 *Local Government Act 1989* (Vic) ss 13(2), (4)–(5), 14(2), 15(2); see also *City of Melbourne Act 2001* (Vic) s 9A(4).

112 *Local Government Act 1989* (Vic) ss 13(4)–(5).

113 *Local Government Act 1989* (Vic) ss 16(1), (2), (5).

114 *Local Government Act 1989* (Vic) s 16(7).

115 *Local Government Act 1989* (Vic) s 16(8).

116 *Local Government Act 1989* (Vic) ss 16(9)(a)–(e).

> (2) Despite anything to the contrary in this Division, a person can only be enrolled on the voters' roll for one ward in a municipal district.
> (3) Despite anything to the contrary in this Part, a person is only entitled to vote once at any election in respect of a Council, regardless of how many different entitlements the person may have to vote in respect of any ward.[117]

The Act also states that '[a] person who is entitled to vote at an election is only entitled to 1 vote in respect of *each* municipal district for which he or she is enrolled'.[118] Thus a voter may only be on the roll for one ward within a council district, and may only vote once at any election for a particular council.[119] Section 11 also states, in sub-section (4), that '[a] person is not entitled to elect which right of entitlement conferred by section 12(1), 13(1), 14(1) or 15(1) to exercise'.[120] This provision may also be read together with section 40(1), which makes it compulsory 'for a person who is enrolled on the voters' roll as a resident under section 12 to vote at any election in respect of the ward in which his or her principal place of residence is located'.[121] The combined effect of these provisions is that a person may vote only once *in any given* council election, but may vote once in elections for multiple different councils.

The *City of Melbourne Act 2001* (Vic) adopts a broadly similar approach to the *Local Government Act 1989* (Vic). For present purposes, two significant differences may be noted with respect to the nominees of corporations. The first major difference is this: where 'a corporation is the owner or occupier of any rateable property in the municipal district' or 'the joint owners or joint occupiers of any rateable property in the municipal district consist of corporations or a combination of people and corporations (of at least 1 person and 1 corporation)' then 'the corporation or the joint owners or joint occupiers may appoint *2* people to represent it or them at Council elections to vote on its or their behalf'.[122] Thus, unlike the rest of Victoria, in the City of Melbourne a corporation may have two votes rather than one.[123] This amounts to a different form of Type 3 plural voting. A similar provision applies to rateable properties with 'more than 2 owners or more than 2 occupiers'; in such a case section 9F sets out the procedure by which two of the owners or two of the occupiers may be enrolled with respect to that property for the purposes of the voters roll.[124]

The second major difference is that voting is compulsory for all persons on the roll at elections for the Lord Mayor, Deputy Lord Mayor, or councillors

117 See also *City of Melbourne Act 2001* (Vic) s 9E(2).
118 *Local Government Act 1989* (Vic) s 39 (emphasis added).
119 Cf Kiss, above n 2, 7.
120 It is not clear that *Local Government Act 1989* (Vic) s 11(4) is strictly necessary: ss 13, 14 and 15 only apply to a person who is not captured by a previous category, thus making it difficult to imagine the circumstances in which the choice envisaged by s 11(4) is enlivened: see ss 13(1)(a), 14(1)(a), 15(1)(a); see also *City of Melbourne Act 2001* (Vic) s 9E(1).
121 *Local Government Act 1989* (Vic) s 40(1A) makes it an offence to fail to vote as required by s 40(1).
122 *City of Melbourne Act 2001* (Vic) s 9C(1) (emphasis added); see also ss 9F–9J.
123 Similarly to the *Local Government Act 1989* (Vic), in the City of Melbourne a corporation may only exercise this right of appointment once, 'regardless of how many rateable properties it owns or occupies or jointly owns or occupies in the municipal district': *City of Melbourne Act 2001* (Vic) s 9C(2). An appointee must be 'a director or company secretary … of the corporation': s 9C(3). See also s 9D.
124 This provision is somewhat closer to *Local Government Act 1989* (Vic) s 13(4).

of the City of Melbourne.[125] Thus, while the statewide law makes voting compulsory for those on the voters roll as *residents*,[126] compulsory voting at City of Melbourne elections extends to appointed representatives *as well as* to residents. In the event that 'one or both of the representatives appointed by a corporation fail to vote at an election,' the corporation is guilty of an offence.[127]

A final observation may be made in this context: in Victoria, Tasmania and South Australia, it is possible for non-citizen residents to vote at local government elections.[128] The normative arguments in favour of affording voting rights to non-citizen residents have been made in a variety of contexts.[129] The expansion of this form of voting rights in the Australian context will undoubtedly be the subject of future research. This article, however – with its focus on plural voting, the property franchise, and votes for corporations – makes no argument about the desirability or otherwise of 'urban citizenship' that involves 'disconnecting membership in the city from nationality'.[130]

F New South Wales and the City of Sydney

Forms of plural voting, votes for corporations, and a property-based franchise are all provided for by New South Wales law. The key legislation in NSW is the statewide *Local Government Act 1993* (NSW) and the more specific *City of Sydney Act 1988* (NSW). Each will be addressed in turn. Like the Victorian equivalents, the legislation is complex.[131]

The *Local Government Act 1993* (NSW) identifies three categories of persons entitled to be enrolled.[132] These three categories share a threshold requirement: to be entitled to be enrolled, a person must be entitled to 'vote at an election of members of the Legislative Assembly or an election of members of the Commonwealth House of Representatives'.[133] That threshold requirement having been met, a person 'is entitled to be enrolled as an elector for a ward if':

(a) he or she is a resident of the ward, or

(b) he or she is *not* a resident of the ward *but is* an owner of rateable land in the ward, or

125 *City of Melbourne Act 2001* (Vic) s 19(1).

126 See above n 121.

127 *City of Melbourne Act 2001* (Vic) s 19(4).

128 See above nn 64 (Tasmania), 76 (South Australia), and 110 (Victoria). See also Reilly and Torresi, above n 8, 419.

129 See, eg, Rainer Bauböck, 'Reinventing Urban Citizenship' (2003) 7 *Citizenship Studies* 139, 151–2; Ng et al, above n 2, 224.

130 Bauböck, above n 129, 151.

131 Recent political controversies over council amalgamations in New South Wales are beyond the scope of this article: see, eg, Lisa Visentin, '"Huge Benefits": Premier Mike Baird Champions Council Amalgamations', *The Sydney Morning Herald* (online), 17 October 2016 <https://www.smh.com.au/nsw/huge-benefits-premier-mike-baird-champions-council-amalgamations-20161017-gs48e8.html>; Jacob Saulwick and Sean Nicholls, 'Mike Baird Resigns and Now John Barilaro Wants to Stop Council Mergers', *The Sydney Morning Herald* (online), 20 January 2017 <https://www.smh.com.au/nsw/mike-baird-resigns-and-now-john-barilaro-wants-to-stop-council-mergers-20170120-gtvb0n.html>.

132 *Local Government Act 1993* (NSW) s 266.

133 *Local Government Act 1993* (NSW) s 266(1).

(c) he or she is an occupier, or ratepaying lessee, of rateable land in a ward.[134]

These three categories countenance the possibility of Type 2 plural voting, but there is a caveat preventing Type 1 plural voting: '[n]othing in this Chapter entitles a person to more than one vote in one area in an election'.[135]

The second category's reference to 'an owner of rateable land in the ward' is expanded upon in section 270, to provide for voting by corporate or group landowners.[136] Thus the category of 'owner of rateable land' includes a natural person nominated by fellow owners of the land, and a natural person nominated by a corporation that owns the land.[137] The section goes on to regulate the possibility of plural voting by stating that

> [i]f a corporation or trustees own more than one parcel of land in [a local government area], or if joint or several owners of one parcel of land in [a local government area] are also joint or several owners of any other parcel of land in the [local government area], it or they can nominate *a person* as the owner of rateable land only in respect of *one* of those parcels.[138]

Similarly, the third category's references to an 'occupier' and a 'ratepaying lessee' are elaborated on by section 271. If there are multiple occupiers, or multiple ratepaying lessees, there is only an entitlement to be enrolled for *one* occupier or for *one* ratepaying lessee respectively.[139] And, similarly to the second category, where a corporation, or trustees, or a joint or several group, are the occupiers or the ratepaying lessees of multiple parcels of land in a local government area, they may nominate a person 'only in respect of one of those parcels'.[140] Type 3 plural voting is avoided here.

In the statewide legislation, these three categories of entitlement then feed into three subsidiary electoral rolls: the residential, non-residential owners, and occupiers and ratepaying lessees rolls.[141] A person may not be enrolled more than once with respect to a particular ward, and may not be enrolled in multiple wards within a local government area.[142] Those persons listed on the residential roll

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134 *Local Government Act 1993* (NSW) s 266(1) (emphasis added). By virtue of s 269, residence in the ward for the purposes of s 266(1)(a) is defined principally by reference to the *Parliamentary Electorates and Elections Act 1912* (NSW). Definitional elaboration of ss 266(1)(b) and 266(1)(c) follows in ss 270 and 271 respectively.

135 *Local Government Act 1993* (NSW) s 268; see also s 304. The 'Note' to s 268 states:

> A person may not exercise more than one vote in any one area even if:
>
> - the person is entitled to be enrolled as an elector for more than one ward in the area; or the person's entitlement is based on more than one of the criteria in section 266(1)(a), (b) and (c), or
> - the person's entitlement is based on the ownership or occupation of more than one parcel of land in the area.

136 *Local Government Act 1993* (NSW) s 270.

137 *Local Government Act 1993* (NSW) ss 270(1)(b)–(c). A mechanism provides for situations where no nomination is made: s 272.

138 *Local Government Act 1993* (NSW) s 270(4) (emphasis added). Further detail is also provided on the definition of rateable land, on multiple ownership, and on the process of nomination: see *Local Government Act 1993* (NSW) ss 270(2)–(3), (5).

139 *Local Government Act 1993* (NSW) ss 271(2), (4).

140 *Local Government Act 1993* (NSW) ss 271(2A), (4A).

141 See *Local Government Act 1993* (NSW) ss 298, 299, 300.

142 *Local Government Act 1993* (NSW) s 304(1).

must vote at a contested election unless exempt; voters on the other two rolls are not compelled to vote.[143]

The City of Sydney is different.[144] The franchise for elections for the City of Sydney has been the subject of some political controversy arising out of legislative amendments made in 2014.[145] The focus of this section is on the detail of the legislation as it stands today. In general, the relevant part of the *City of Sydney Act 1988* (NSW) 'shall be construed with, and as if it formed part of' the *Local Government Act 1993* (NSW), but the Sydney legislation prevails over the statewide legislation in the event of an inconsistency to the extent of the inconsistency.[146] The Sydney legislation also expressly indicates that a number of election-related sections from the general legislation 'do not apply to the City of Sydney'.[147]

The Sydney legislation is drafted in a rather repetitive and complex way. Broadly, the Sydney laws are similar to the statewide laws, with three similar categories of voters.[148] There are, however, differences in the detail. Most relevantly for present purposes, where the 'owner' or 'ratepaying lessee or occupier' of rateable land is a corporation or a group of persons, the Sydney legislation allows for *two* nominees to vote on behalf of the owner or lessee or occupier, rather than *one*.[149] This amounts to Type 3 plural voting.

There are two qualifications to this position: first, 'regardless of how many parcels of rateable land it owns, leases or occupies or jointly owns, leases or occupies', a person or a corporation or a group of owners may only make one nomination of its two nominees.[150] Second, a resident of the City may not be enrolled in any capacity other than their capacity as a resident.[151]

Mirroring and drawing on the *Local Government Act 1993* (NSW), the *City of Sydney Act 1988* (NSW) requires the preparation of three electoral rolls: the roll of non-resident owners of rateable land, the roll of occupiers and ratepaying lessees, and the residential roll.[152] Unlike the *Local Government Act 1993* (NSW), however, the *City of Sydney Act 1988* (NSW) makes voting at contested elections compulsory for all electors whose names are on any of the three electoral rolls.[153]

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143 *Local Government Act 1993* (NSW) s 286.

144 See *City of Sydney Act 1988* (NSW) ss 3(2)–(3), 15(3) with respect to *Local Government Act 1993* (NSW) ss 266, 269–72. On the origins of the City of Sydney, see Larcombe, above n 27, ch 4.

145 *City of Sydney Amendment (Elections) Act 2014* (NSW); see, eg, sources cited at above n 3.

146 *City of Sydney Act 1988* (NSW) ss 3(2)–(3).

147 *City of Sydney Act 1988* (NSW) s 15(3) with respect to *Local Government Act 1993* (NSW) ss 266, 269–72.

148 See *City of Sydney Act 1988* (NSW) s 15(1). See also ss 14, 15(2), 16, 16AA, 16AB, 16AC, 16A, 16B.

149 See *City of Sydney Act 1988* (NSW) ss 14(1AA)–(3), (6), 16AA, 16AB, 16AC, 16B.

150 See *City of Sydney Act 1988* (NSW) ss 16(3), 16AA(3).

151 *City of Sydney Act 1988* (NSW) s 16(4); see also ss 14(6)(a), 16AB(1)(f), 16B(2)(d).

152 *City of Sydney Act 1988* (NSW) ss 17, 18A–18F; cf *Local Government Act 1993* (NSW) ss 298, 299, 300. At times the City of Sydney Act 1988 (NSW) nomenclature is used apparently inconsistently: sometimes the roll of occupiers and ratepaying lessees is grouped as a 'non-residential roll' (eg, s 18B(1)), and sometimes it is not (eg, s 18A(1)); sometimes the owners roll is referred to as the roll of non-resident owners of rateable land (eg, ss 18A(1)(a), 18B(1), 18C(1)) and elsewhere it is referred to as the 'non-residential roll' (eg, s 22(1)).

153 *City of Sydney Act 1988* (NSW) s 22(1).

IV REFORM

Part III demonstrated the ways in which provisions for property-based franchises, votes for corporations, and plural voting, are prevalent in five of Australia's six states; it analysed and disaggregated the kaleidoscope of ways in which the various state provisions operate. In this Part, I make a brief argument that legislatures in those five states should, instead, adopt Queensland's approach to the franchise at local government elections. Law reform to implement the Queensland model would mean that non-resident ratepayers and corporations would be deprived of one of their votes, or, in some cases, several of their votes. But this Part will note that the disenfranchisement of non-resident property owners and corporations is a feature of Australia's state and federal electoral systems, and that local government ought not be any different. In making the argument for change, I do not offer predictions about the political viability of such reforms.[154]

The argument for reform has been made before, not least by the Queensland government in the 1920s. But there are also more recent examples. Hornby, for instance, was strident in his criticism of the 'confused voting structure of local government elections', embedded in 'political and bureaucratic systems that coalesce to give legal sanction to additional voting rights for individuals with wealth and privilege' and which risk 'being seen to place privilege and self-interest before the recognition of the common rights of all'.[155] The discussion paper and the directions paper published as part of the recent review of the *Local Government Act 1989* (Vic) both raised the possibility of reform to the Victorian local franchise.[156]

One way to consider what democracy means in contemporary Australia is through the constitutional jurisprudence of the High Court. The last decade has seen several significant High Court decisions related to the franchise at federal elections. Although those decisions relate to the provisions of the *Commonwealth Constitution*, they also involved discussion of Australian democracy more broadly. As Crennan J put it, 'franchises based on residential qualifications, rather than property qualifications, [have come] to be seen as quintessentially democratic'.[157] Moreover, the notion that 'no person shall have more than one

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154 It has been suggested that reform of the franchise at local elections may be required before some forms of constitutional recognition of local government: see Office of Local Government (Cth), Submission to Australian Constitutional Commission, *A Case for Constitutional Recognition of Local Government* in 'Law Reform' (1988) 14 *Commonwealth Law Bulletin* 172, 211, 213:

> Inclusion in the Constitution would obligate local government to adhere to the same democratic principles and practices governing elections of the Australian Government, Australian State and Territory Governments. In a democracy with interlocking legislative structures, all sectors of government should have a common democratic base regarding the value of each person's vote, each person's voting eligibility, and each person's voting obligation. This would mean changing the local government electoral system in some States.

155 Hornby, above n 2, 61.

156 See Department of Environment, Land, Water & Planning (Vic), 'Discussion Paper', above n 98, 31–2; Department of Environment, Land, Water and Planning (Vic), 'Directions Paper', above n 98, 55–7.

157 *Rowe v Electoral Commissioner* (2010) 243 CLR 1, 108 [331].

vote' has been described as part of 'the "democratic" principle'.[158] I make no argument here that the existing state legislation is contrary to the *Commonwealth Constitution*, but that legislation is certainly inconsistent with contemporary understandings of representative democracy, as reflected in the High Court's case law.

Thus, the central argument here is one of equality in a democratic society, informed by the views of Crennan J about Australian democracy more generally. This is not a philosophy paper, but it may be noted that Crennan J's view of Australian democracy accords with those political philosophers who have argued that political equality is one of 'the basic ideals of democracy' and that political equality 'assigns each citizen an equal vote and requires that decisions be made by a majority'.[159] As Christiano has argued, '[o]ne person, one vote' is one of a number of 'widely recognized standards of equality'.[160] Moreover, he suggests that 'democracy is one of the main ways in which the equality of citizens is expressed in society'.[161]

While the focus of this article is on electoral law, it must be acknowledged that there is academic debate about the ways in which decision-making in democratic societies might also be facilitated by non-electoral means.[162] There are also related academic debates about whether local government's 'closer proximity to the people' means it ought to be reformed fundamentally to include 'more participative and innovative mechanisms' inspired by deliberative democracy.[163] This article does not, however, aspire to contribute to those debates. Instead, as a postulate for the purposes of this article, I adopt the view of democracy outlined by Crennan J above.

As Part II demonstrated, the role and significance of local government have evolved over time. Local governments operate as an important form of government in contemporary Australia, and Australians should have an equal say in electing those governments and an equal opportunity to hold those governments accountable at the ballot box.[164] Australian democracy has been

158 Ibid 114–15 [354] (Crennan J), citing W Harrison Moore, *The Constitution of the Commonwealth of Australia* (John Murray, 1902) 106.

159 Thomas Christiano, *The Rule of the Many* (Westview Press, 1996) 3. Cf John Rawls, *A Theory of Justice* (Harvard University Press, 1999) 194–200; Harry Brighouse and Marc Fleurbaey, 'Democracy and Proportionality' (2010) 18 *Journal of Political Philosophy* 137; Jason Brennan, 'The Ethics and Rationality of Voting' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Metaphysics Research Lab, Stanford University, Winter ed, 2016) pt 6 <https://plato.stanford.edu/archives/win2016/entries/voting/>.

160 Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford University Press, 2008) 96.

161 Ibid 88.

162 See, eg, Michael E Morrell, *Empathy and Democracy: Feeling, Thinking, and Deliberation* (Pennsylvania State University Press, 2010) ch 2; Andrew F Smith, *The Deliberative Impulse: Motivating Discourse in Divided Societies* (Lexington Books, 2011) 2.

163 Ng et al, above n 2, 234.

164 On the 'Principle of Equally Accountable Representation', see Stephen L Darwall, 'Equal Representation' in J Roland Pennock and John W Chapman (eds), *Liberal Democracy: Nomos XXV* (New York University Press, 1983) 51, 55 (emphasis altered). Cf Hanna Fenichel Pitkin, *The Concept of Representation* (University of California Press, 1967) 55; Amy Gutmann, *Liberal Equality* (Cambridge University Press, 1980) 187–8, 200.

described as 'an active and continuing process in which all legally eligible citizens had an equal share in the political life of the community'.[165] Allowing plural voting by those who own properties or those appointed by corporations is inconsistent with that description, and with broader notions of political equality as assigning to 'each citizen an equal vote'.[166]

It bears emphasising that no form of property franchise, votes for corporations, or plural voting exists at the state or federal levels. This is significant insofar as it demonstrates an understanding of democracy different from that provided for at the local level by the five non-Queensland states.

But it is also significant in light of the arguments made by advocates of the status quo. It is appropriate to address several of these arguments. It is sometimes said, for example, that the status quo is justified because non-resident owners and occupiers 'have a significant interest in the area' by virtue of their 'financial, and or, commercial investment in the local government area'.[167] Similarly, it has been said that the existing arrangements 'allow those who financially support the [council] through rates to have a say in how the council is run'.[168] These arguments raise equality concerns: the arguments are premised on affording greater democratic rights to a cohort within the broader community. But taken on their merits, these arguments would also apply just as strongly at the state and federal levels – governments at those levels being supported through taxation paid by individuals, businesses, and non-residents alike. Taken to their logical extension, these arguments would also justify Type 2 plural voting rights at state elections for non-residents: for example, voting rights at New South Wales state elections for someone who is a resident of Victoria but owns a business in New South Wales.[169] The reason that such plural voting has been rejected at the state level is also why it ought to be rejected at the local level: it unequally affords a greater democratic say to those who own property or businesses than those who do not. Finally on this point, it should also be noted that the 'significant interest' arguments implicitly suggest that non-property-owning non-residents – for example, people who work or study in a local government area but live elsewhere – have no 'significant interest' in the area in which they work or study.[170] This underlines the inequality inherent in the current system.

Another argument commonly made by defenders of the status quo is that, by affording votes to non-residents and to corporations, it embodies the maxim that there should be 'no taxation without representation'.[171] Even if one accepts that

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165 *Rowe v Electoral Commissioner* (2010) 243 CLR 1, 11–12 [344] (Crennan J).

166 Christiano, *The Rule of the Many*, above n 159, 3.

167 Local Government Advisory Board, 'Local Government Structural and Electoral Reform in Western Australia: Ensuring the Sustainability of Communities' (Report, Government of Western Australia, April 2006) 149.

168 New South Wales, *Parliamentary Debates*, Legislative Council, 14 August 2014, 30593 (Robert Borsak).

169 Cf Local Government Advisory Board, above n 167, 151.

170 See United Kingdom, *Parliamentary Debates*, House of Commons, 10 December 1968, cc 294–5 (Stanley Henig).

171 See, eg, New South Wales, *Parliamentary Debates*, Legislative Council, 14 August 2014, 30593 (Robert Borsak); New South Wales, *Parliamentary Debates*, Legislative Council, 16 September 2014, 465 (John Ajaka); New South Wales, *Parliamentary Debates*, Legislative Assembly, 17 September 2014, 722 (Paul

such a maxim is part of Australian political history,[172] its application to the franchise is, at best, inconsistent: corporations, for example, are routinely subject to state and federal taxes and charges without any right to vote at state or federal elections.[173] Moreover, as Ng et al note, the interests of property owners at the local level can also be said to be 'sufficiently represented by non-electoral mechanisms'.[174] The maxim therefore ought to be unpersuasive in this context, not least because its application would result in expanded democratic rights for people likely to already be in a position of privilege.

With respect to the particular situation of the City of Sydney, the New South Wales Minister for Local Government justified the 2014 reforms by stating in Parliament that there was 'a longstanding democratic anomaly in Sydney, which at the most recent election saw those [business voters] who contribute 78.5 per cent of the council's ratepayer revenue exercise only 2.13 per cent of the votes'.[175] This 'democratic anomaly' was cited as part of the justification for affording businesses two votes, and for making that voting compulsory.[176] But to resolve a supposed 'democratic anomaly' by enhancing the inequality identified above seems counterproductive. Although strictly beyond the scope of this article, it may be noted that one alternative way to resolve this sort of 'anomaly' might be to regard it as an example of a 'boundary problem': 'the problem of determining the proper boundaries of the self-governing unit'.[177] Thus if the 'anomaly' is that decisions made by the City of Sydney affect non-residents, perhaps the boundaries of the City ought to be re-drawn to more accurately ensure that, to the greatest extent possible, all 'those affected by the decision are included in the catchment area of the [government] body'[178] making the decision.[179] But there is a further and simpler point to be made here, already

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Toole, Minister for Local Government); see also United Kingdom, *Parliamentary Debates*, House of Commons, 10 December 1968, cc 292–3 (Peter Walker).

172 New South Wales, *Parliamentary Debates*, Legislative Assembly, 17 September 2014, 724 (Barbara Perry); cf *Rowe v Electoral Commissioner* (2010) 243 CLR 1, 110–11 [341] (Crennan J).

173 See, eg, Australian Trade and Investment Commission, *Australian Business Taxes* (16 July 2015) Invest in Australia: Guide to Investing <https://www.austrade.gov.au/International/Invest/Guide-to-investing/Running-a-business/Understanding-Australian-taxes/Australian-business-taxes>.

174 Ng et al, above n 2, 225.

175 New South Wales, *Parliamentary Debates*, Legislative Assembly, 17 September 2014, 722 (Paul Toole, Minister for Local Government); see above n 145. One may wonder whether only property owners or occupiers contributed to those revenues or whether non-resident workers in the relevant businesses may also have made a contribution. The latter are not enfranchised in the City of Sydney.

176 One justification for the plural votes was offered in the Legislative Council by Robert Borsak:

> A household pays only one set of rates, which is substantially less than a business pays. Yet most households have two or more eligible voters living there; they get to have a say for the payment of only one set of rates. If businesses are forced to pay rates those same businesses should have a say as to how those rates are used.

New South Wales, *Parliamentary Debates*, Legislative Council, 14 August 2014, 30 593.

177 Frederick G Whelan, 'Prologue: Democratic Theory and the Boundary Problem' in J Roland Pennock and John W Chapman (eds), *Liberal Democracy: Nomos XXV* (New York University Press, 1983) 13, 15.

178 N W Barber, 'The Limited Modesty of Subsidiarity' (2005) 11 *European Law Journal* 308, 318; cf Whelan, above n 177, 16–19.

179 See an analogous discussion with respect to Scotland in Barber, above n 178, 318–19. Cf Anne Twomey, 'Reforming Australia's Federal System' (2008) 36 *Federal Law Review* 57, 59; Ng et al, above n 2, 228.

identified above: perhaps the only democratic anomaly is that business can vote *at all*. After all, businesses do not vote at elections for the federal Parliament and state Parliaments, or at local elections in Queensland, regardless of how much tax revenue they have contributed to the relevant jurisdiction. The concern for equality that underpins this aspect of the state and federal franchise ought to be extended to the local government franchise.

V CONCLUSION

Local government has been described as 'the bedrock of any successful democracy'.[180] This article has offered an analysis and critique of state laws regulating one significant aspect of that bedrock: the franchise at Australian local government elections, with a particular focus on plural voting, the property franchise, and votes for corporations. Moreover, having set those laws in their historical context, the article has made a concise argument for reform in five of Australia's six states.

Australia's local governments perform important governmental functions. Elections for those governments ought to be guided by the same democratic principles that are enshrined for federal elections by the *Commonwealth Constitution* and for state elections by state legislation.

180 Andrew Adonis and Stephen Twigg, 'The Cross We Bear – Electoral Reform for Local Government' (Discussion Paper No 34, Fabian Society, 1997) 1.