

## Access to Energy Services as a Human Right

There is still significant public debate in Australia as to what, if any, rights are fundamental and how these rights should be protected by the state, as well as individuals. This diversity of opinion is evident in the final report that resulted from consultation regarding a possible 'Human Rights Act' for Western Australia<sup>1</sup>. The idea that people have a right to life is well understood, however, and is contained within Article 3 of the United Nations' *Universal Declaration of Human Rights*<sup>2</sup>. Similarly, the human right to water is also now well understood as being vital for the maintenance of health and wellbeing and in 2002, was adopted by the United Nations Committee on Economic, Social and Cultural Rights as a fundamental human right, independent of other rights<sup>3</sup>. Historically, 'the right to water' had been implied within article 12.1 of the *International Covenant on Economic, Social and Cultural Rights*, which specifies the right to the determinants of health, including 'water and adequate sanitation'<sup>4</sup>.

### Access to Energy Services – A Human Right

Further to the above-stated rights to life and water, Article 25 (1) of the *Universal Declaration of Human Rights* also reads:

*"Everyone has the right to a standard of living adequate for the health and well-being of [themselves] and of [their] family ..."*

Perhaps further to, and unrelated to this statement of a fundamental human right, the Australian Productivity Commission, in its 2005 review of National Competition Policy stated that:

*"Reliable, affordable and sustainable energy services are critical to Australia's economic and social wellbeing ... they are essential for supporting basic quality of life."<sup>5</sup>*

For most households, full participation in society and the maintenance of acceptable levels of hygiene is highly or totally dependent on their continued access to affordable essential services such as gas and electricity. This was recognised by the Australian Senate Inquiry into Poverty and Financial Hardship who stated that:

---

<sup>1</sup> Human Rights Act Consultation Committee (2007), Report of the Consultation Committee for a proposed WA Human Rights Act, November 2007

<sup>2</sup> United Nations (1948), 'Universal Declaration of Human Rights', Resolution 217 A (III), 10 December 1948, <http://www.un.org/Overview/rights.html>, as viewed at 25 February, 2008

<sup>3</sup> World Health Organization (2003), The Right to Water, France, February 2003, p. 8

<sup>4</sup> Ibid, p. 3

<sup>5</sup> Australian Productivity Commission, 'Review of National Competition Policy', April 2005, §8.2, pg. 180,

*“Evidence indicated the importance of ensuring access to low income households to essential utilities such as electricity, gas, water and telephone services. Those services provide the basic means by which any household is able to function in a modern society.”<sup>6</sup>*

The right to access to energy services has now been well-discussed in the literature. While energy services – that is, electricity and gas services, have some superficial similarities to essential services such as water, energy services differ from water in at least one key respect. Unlike water, energy in the form of electricity and gas does not have an ‘intrinsic’ value, in and of itself<sup>7</sup>. It is, rather, the uses that energy in the form of electricity and gas is put to that makes these services necessary for the maintenance of a reasonable quality of life.

### **Communities Need Energy Services**

While the links between a lack of access to essential energy services and the direct impacts such as poor health and reduced social inclusion are now well understood<sup>8</sup>, there has perhaps been less focus within so-called ‘developed’, industrialised countries on the strong nexus between access energy and the prevalence of poverty in a society. This relationship has been explored in the context of nations currently undergoing the process of industrialisation where by it was noted that a lack of access to energy services contributed ‘to poverty ... deprivation and ... economic decline’<sup>9</sup>.

The above analysis concentrates on situations where the majority of people in a community have little or no access to energy services. In considering the importance of energy services to a community, it may be appropriate to consider the significant public debate that has previously arisen where communities have lost their access to energy, where previously they had had some access, due to conflict or other problems<sup>10</sup>. Baring such situations in mind, it is clear that once a community has adopted the use of energy services to maintain basic hygiene, prepare (and store) food and regulate temperature, it is truly an essential service.

### **Energy Services and Community**

In industrialised nations, as typified by Australia, the concept of community is open to significant debate. Whereas people related by family, similar income, occupation or cultural origin may once have lived next to, or close by one-

---

<sup>6</sup> Australian Senate (2004), ‘Report from the Australian Senate Community Affairs References Committee Inquiry into Poverty and Financial Hardship (Senate Poverty Inquiry)’, Ch. 9, pg. 191

<sup>7</sup> Bradbrook, A. J. & Gardam, J. G (2006), ‘Placing Access to Energy Services in a Human Rights Framework’, *Human Rights Quarterly*, Vol. 28, p. 392

<sup>8</sup> As discussed at length in Public Interest Advocacy Centre (2005), *Cut Off: The Impact of Utility Disconnections*, Utility Consumers Advocacy Program, February 2005

<sup>9</sup> United Nations Development Programme (2004), *World Energy Assessment: Overview 2004; Update 45*, Supra note 5 at p. 44, cited in Bradbrook & Gardam, op. cit., p. 393

<sup>10</sup> Human Rights Watch (2008), *Gaza: Israel’s Energy Cuts Violates Rules of War*, New York, February 7 2008, p. 1

another, and identified themselves as a 'community', the word itself now has much more diffuse meanings. 'Communities' may now be dispersed across large geographical areas and be co-located with other groups identifying themselves as a community<sup>11</sup>.

In Western Australia, during the 2006-2007 financial year, there was nearly 9,000 instances in which homes were disconnected from their electricity supply as a result of non-payment, a disproportionately large quantity of these disconnections taking place in rural and regional areas<sup>12</sup>. In almost half of these cases, households were without power for more than a month<sup>13</sup>. While it is unlikely that entire suburbs or streets experienced disconnection as a result of non-payment, the significant effects of disconnection were undoubtedly felt within communities and families.

WACOSS holds that it is the responsibility of governments to guarantee that the essential needs of society – such as the maintenance of life and health - are met. The electricity and gas markets in Western Australia are currently undergoing significant processes of review, which has resulted in many cases in the progressive deregulation of these markets. The incidence of disconnection from electricity services in Western Australia remains high by national standards.

In addressing access to essential services such as energy, perhaps it is now necessary that the issue be viewed through the perspective of human rights. Such an orientation not only carries moral weight, but may empower consumers<sup>14</sup> and their representatives in seeking redress in the face of market failure.

For further information, please contact Aden Barker – Senior Policy Officer, Consumer utilities Project on 9420 7222.

---

<sup>11</sup> Ife, J. & Tesoriero, F. (2006), *Community Development: Community-Based Alternatives in an Age of Globalisation*, 3<sup>rd</sup> Ed., Peasorn Longman, News South Wales, p. 98

<sup>12</sup> Economic Regulation Authority (2008), *2006/07 Annual Performance Report: Electricity Retailers*, January 2008, p. 4

<sup>13</sup> Ibid, p. 5

<sup>14</sup> Tully, S. (2006), 'The Human Right to Access Electricity', *The Electricity Journal*, February 2006, p. 34