



# PAUL FLETCHER MP

Federal Member for Bradfield  
Minister for Communications,  
Urban Infrastructure,  
Cities & the Arts

MS22-000681

Ms Gina Cass-Gottlieb  
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By email: [gina.cass-gottlieb@accc.gov.au](mailto:gina.cass-gottlieb@accc.gov.au)

Dear Ms Cass-Gottlieb

I would like to congratulate you on your appointment as chair of the Australian Competition and Consumer Commission (ACCC). The ACCC is a key agency in Australian economic and consumer regulation and I appreciate the significant role you have accepted. The ACCC interacts with my portfolio in a range of important areas and I look forward to working with you productively into the future.

The Australian Government has been finalising its response to the 2021 Regional Telecommunications Review. As discussed between officers of the ACCC, the Treasury and my Department, there are a number of matters on which the Government would appreciate the ACCC's assistance.

In this context I am now writing to formally direct the ACCC under section 496 of the *Telecommunications Act 1997* to conduct a public inquiry into access to towers and associated infrastructure in regional, rural, remote and peri-urban Australia; and the feasibility of temporary mobile roaming during natural disasters and emergencies. The formal direction and its explanatory statement are attached.

The inquiry is not an inquiry into domestic mobile roaming generally, for example, of the kind previously conducted by the ACCC in 1998, 2005 and 2016. Similarly, the inquiry is not intended to be a regulatory inquiry, such as the ACCC might conduct under the facilities access in Part 5 of Schedule 1 of the *Telecommunications Act 1997* or an access inquiry under Part XIC of the *Competition and Consumer Act 2010*, nor is it intended to be a review of these regulatory mechanisms. Rather, the inquiry is intended to focus on the real world operating environment for tower access and associated facilities with a view to supporting future Government policy decisions on regional mobile telecommunications provision, including future initiatives to improve mobile coverage, capacity or competition.

While the ACCC should report on its findings, the Government is not seeking recommendations from the Commission.

I ask that the inquiry start by no later than 1 July 2022 and be completed as soon as possible and no later than 30 June 2023.

It is preferable that the ACCC consult on a draft report before finalising the report and I would ask that the Government receive advance notice of the ACCC's final report, as well as an advance copy of the report.

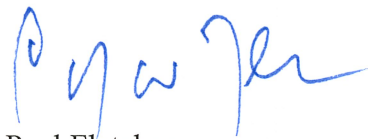
The ACCC should keep my Department informed of its progress, noting the inquiry will be relevant to the implementation of a range of other measures that form part of the Government's response to the 2021 Regional Telecommunications Review. My Department can provide the ACCC with further information on the background, context and purpose of the inquiry.

The Government will contact the ACCC about a number of further measures involving the ACCC arising from the Government response to the Review shortly.

I would also like to take this opportunity to thank the ACCC for making Mr Michael Cosgrave available to the Review prior to his retirement. He has made a valuable contribution to the Review that is greatly appreciated.

I have copied this letter to the Deputy Prime Minister, the Treasurer, the Minister for Regionalisation, Regional Communication and Regional Education, and the Minister for Agriculture, Drought and Emergency Services.

Yours sincerely



Paul Fletcher

25/3/2022

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## Telecommunications (ACCC Inquiry into Access to Regional Towers and Associated Infrastructure) Direction 2022

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I, Paul Fletcher, Minister for Communications, Urban Infrastructure, Cities and the Arts, make the following direction.

Dated 25 March 2022

A handwritten signature in blue ink, appearing to read 'Paul Fletcher'.

Paul Fletcher  
Minister for Communications, Urban Infrastructure, Cities and the Arts

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## 1 Name

This instrument is the *Telecommunications (ACCC Inquiry into Access to Regional Towers and Associated Infrastructure) Direction 2022*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument.	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under subsection 496(1) of the *Telecommunications Act 1997*.

## 4 Definitions

- (1) In this instrument:

*ACCC* means the Australian Competition and Consumer Commission.

*Act* means the *Telecommunications Act 1997*.

*towers* includes NBN towers, radio and television broadcasting towers and other suitable towers or similar structures that could be used to improve mobile coverage.

- (2) For the purposes of this instrument, reference to ‘likely users’ in subsections 5(2) and (3) includes telecommunications carriers, telecommunications service providers, utilities, emergency service organisations, and other operators of radiocommunications equipment.

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## 5 Direction

(1) I direct the ACCC to hold a public inquiry under Division 3 of Part 25 of the Act, commencing no later than 1 July 2022, in relation to:

- (a) access to towers and associated passive and active infrastructure provided by telecommunications and other infrastructure providers in regional, rural, remote and peri-urban areas within Australia, that can be used in the supply of mobile telecommunications and other radiocommunications services; and
- (b) the feasibility of temporary mobile roaming services to be provided during natural disasters and other such emergencies.

Note 1: For the purposes of paragraph (a), reference to ‘telecommunications and other infrastructure providers’ includes specialist tower operators, neutral host operators, telecommunications carriers, owners of other suitable infrastructure, utilities, and emergency service organisations.

Note 2: Under section 505 of the Act, the ACCC must prepare a report setting out its findings as a result of the inquiry and give a copy to the Minister. The ACCC is expected to provide a copy of this report to the Minister as soon as is reasonably practicable, or otherwise within 12 months from the commencement of this inquiry.

(2) The ACCC must have regard to all of the following matters (without limitation) in connection with the conduct of the inquiry:

- (a) the costs of providing towers and associated passive and active infrastructure that can be used by third party telecommunications providers and others to supply mobile telecommunications and other radiocommunications services;
- (b) the costs of accessing land to provide the towers and associated infrastructure referred to in paragraph (a);
- (c) the existing commercial and other fee arrangements under which third party telecommunications providers and other likely users can access the towers and associated infrastructure referred to in paragraph (a), including the considerations that contribute to establishing such fee arrangements (such as the costs of providing such access, as distinguished from the costs of providing the towers and associated infrastructure);
- (d) the effectiveness of current commercial and regulatory arrangements in enabling third party telecommunications providers and other likely users to access the towers and associated infrastructure referred to in paragraph (a);
- (e) the kinds of matters (including the impact of costs) providers of the towers and associated infrastructure referred to in paragraph (a) consider in deciding to:
  - (i) provide the towers and associated infrastructure referred to in paragraph (a); and
  - (ii) provide access to such towers and infrastructure.
- (f) how the kinds of matters described in paragraph (e) may affect the provision of greater mobile coverage;
- (g) the implications (if any) for the provision of access to towers and associated infrastructure referred to paragraph (a) of mobile carriers divesting their tower and associated infrastructure businesses, including (without limitation):

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- (i) the scope of access offered;
  - (ii) the terms and conditions of access;
  - (iii) the commercial and other fee arrangements for access; and
  - (iv) the kinds of considerations that contribute to establishing these commercial and other fee arrangements for access;
- (h) the feasibility of providing temporary mobile roaming services during natural disasters and other such emergencies, including (without limitation):
- (i) the technical feasibility of providing such services;
  - (ii) the support systems and business processes required; and
  - (iii) the associated time and costs expected in providing such services.
- (3) The ACCC must consult with the following persons, bodies, and agencies (as applicable, but without limitation) in respect of the matters described in subsection (2):
- (a) providers of the towers and associated infrastructure referred to in paragraph (2)(a);
  - (b) providers of other infrastructure that could similarly be used in supplying mobile telecommunications and other radiocommunications services;
  - (c) likely users of the towers and associated infrastructure referred to in paragraph (2)(a); and
  - (d) members of the community that may be interested in improvements in mobile coverage and / or temporary mobile roaming services to be provided during natural disasters and other such emergencies.

## **Explanatory Statement**

Issued by the Authority of the Minister for Communications,  
Urban Infrastructure, Cities and the Arts.

*Telecommunications Act 1997*

### **Telecommunications (ACCC Inquiry into Access to Regional Towers and Associated Infrastructure) Direction 2022**

#### **Authority**

This instrument is made under subsection 496(1) of the *Telecommunications Act 1997* (the Act).

#### **Purpose**

The purpose of the *Telecommunications (ACCC Inquiry into Access to Regional Towers and Associated Infrastructure) Direction 2022* (the Direction) is to direct the Australian Competition and Consumer Commission (ACCC) to undertake a public inquiry into the matters specified in the Direction.

#### **Background**

The Australian Government has had a longstanding interest in improving mobile coverage and the competitive supply of mobile services in regional, rural, remote and peri-urban Australia. In this context, it has been considering whether access to mobile towers and associated infrastructure is supportive of such improvements, noting the Government has been investing in expanding mobile coverage through programs like the Mobile Black Spot Program and may make further such investments.

On 13 December 2022 the Regional Telecommunications Independent Review Committee (RTIRC) submitted its report on the 2021 Regional Telecommunications Review to the Government.<sup>1</sup> The RTIRC made a number of findings about mobile networks and services in regional, rural, remote and peri-urban Australia. It highlighted the continuing importance of mobile services, including in natural disasters. The report considered ways of improving coverage and competition, such as shared network access as well as access to necessary inputs. It recommended that the Government continue to support provision of new mobile coverage, with investments that address coverage, capacity and competition issues and consider funding vehicles which leverage private sector co-investment (recommendation 2).

The RTIRC also recommended that the Government undertake a feasibility study to consider the capability for mobile roaming to be deployed in emergency circumstances (recommendation 9). This could assist members of the public to contact emergency or rescue organisations, or each other, during natural disasters if they are in an area where their own mobile provider does not have coverage. While mobile phones in Australia can access emergency numbers (e.g. 000) via other providers' networks, where other numbers are concerned a mobile phone operating on one carrier's network cannot access another

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<sup>1</sup> Available at [www.infrastructure.gov.au/department/media/publications/2021-regional-telecommunications-review-step-change-demand](http://www.infrastructure.gov.au/department/media/publications/2021-regional-telecommunications-review-step-change-demand).



carrier's network without technical adjustments being made by mobile carriers and agreements being in place between carriers.

This direction responds to these mobile service issues already of interest to the Government and also raised by the RTIRC.

The inquiry is not linked to any specific ACCC regulatory processes under Part XIC of the *Competition and Consumer Act 2010*, or under Part 5 of Schedule 1 to the Act. It is not a direction to commence a new inquiry into domestic mobile roaming. It is instead intended to generate information that can clarify technical and market issues and contribute to possible policy and program development to improve regional mobile coverage and competition.

It is envisaged that the ACCC will commence the inquiry by 1 July 2022 and complete it within 12 months. The ACCC is not expected to make recommendations, but instead to provide evidence-based findings that facilitate policy development. The ACCC will consult widely, including infrastructure providers and likely users.

### **Consultation**

The RTIRC consulted widely in developing its recommendations, receiving over 650 submissions. Improvements in mobile coverage, capacity and competition are strong themes in the report of the Committee, as are access to inputs to supply services and network sharing models. The Department of Infrastructure, Transport, Regional Development and Communications consulted the ACCC on the draft Direction.

The Office of Best Practice Regulation (OBPR) considers that the inquiry does not result in additional regulatory burden under the Australian Government Regulatory Impact Analysis Framework as the inquiry is exercised through the ACCC's existing functions (OBPR reference OBPR22-01657).

The provisions of the direction are direction are explained in [Attachment A](#).

### **Statement of compatibility with human rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at [Attachment B](#).

**Details of the *Telecommunications (ACCC Inquiry into Access to Towers and Associated Infrastructure) Direction 2022***

Section 1 – Name

This section provides that the name of the instrument is the *Telecommunications (ACCC Inquiry into Access to Regional Towers and Associated Infrastructure) Direction 2022* (the Direction).

Section 2 – Commencement

Section 2 provides that the Direction commences the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Direction is made under subsection 496(1) of the *Telecommunications Act 1997* (the Act).

Section 4 – Definitions

Section 4 provides a limited number of definitions relevant to the direction. In general, terms within the instrument are not defined and therefore would have their everyday meaning.

Subsection 4(1) provides definitions of relevant terms in the Direction, including ‘ACCC’ and ‘Act’. A definition is also provided for ‘towers’ to make clear that this term includes NBN towers (i.e., towers that are part of the National Broadband Network), radio and television broadcasting towers or similar structures that could be used to improve mobile coverage.

Subsection 4(2) provides that, for the purposes of the Direction, reference to ‘likely users’ in subsections 5(2) and (3) includes telecommunications carriers, telecommunications service providers, utilities, emergency service organisations and other operators of radiocommunications equipment. The intention is to require the ACCC to consider a broad range of possible users of towers, permitting it to develop a more complete picture of tower access and use.

Section 5 – Direction

This section provides the specific directions to the ACCC. Subsection 5(1) sets out the two main issues for the inquiry:

- (a) access to towers and associated passive and active infrastructure provided by telecommunications and other infrastructure providers in regional, rural, remote and peri-urban areas within Australia, that can be used in the supply of mobile telecommunications and other radiocommunications services; and
- (b) the feasibility of temporary mobile roaming services to be provided during natural disasters and other such emergencies.

Apart from towers, passive infrastructure would include facilities such as sheds, ducts or pits. Active infrastructure could include both telecommunications infrastructure such as backhaul, cabling or radiocommunications devices, and plant and power infrastructure such as cooling, batteries, generators or power lines.

Regional area, rural area, remote area, peri-urban area, mobile telecommunications services and wireless services would have their everyday meanings. For the assistance of the reader, a 'peri-urban area' should be understood as the area around an urban area that is the interface of an urban area with more rural and bushland areas.

Natural disasters includes significant disasters, such as floods, cyclones or major bushfires, during which telecommunications infrastructure may experience significant damage and disruption, such that people in the areas affected by the disaster may have difficulty contacting emergency or rescue organisations, or other people, using their usual communications channels, raising the potential benefit of alternative communications means. Other such emergencies would be more short-lived emergencies, but where there may be also be damage or disruption to telecommunications networks and a similar benefit in having access to alternative mobile networks.

Two notes are provided for the benefit of the reader. Note 1 specifies that 'telecommunications and other infrastructure providers' includes specialist tower operators, neutral host operators, telecommunications carriers, owners of other suitable infrastructure, utilities, and emergency service organisations. This makes clear that the ACCC should consider a broad range of infrastructure providers.

Note 2 advises that, under section 505 of the Act, the ACCC must prepare a report setting out its findings as a result of the inquiry and give a copy to the Minister. It also advises that the ACCC is expected to provide a copy of the report as soon as is reasonably practicable, or otherwise within 12 months from the commencement of the inquiry.

Subsection 5(2) specifies matters to which the ACCC must have regard. The ACCC is not limited to considering only these matters. Together, the matters go to the Government better understanding how costs affect tower access fees and broader decisions to invest in towers and associated infrastructure that could improve mobile coverage, as well as the feasibility of providing mobile roaming during natural disasters and emergencies.

Paragraphs 5(2)(a)-(c) of the matters require the ACCC to have regard to the costs that underlie the provision of towers and associated infrastructure, including land access charges, and the fee arrangements that relate to obtaining access to those towers and that infrastructure. Together, these paragraphs provide that the ACCC will generate evidence-based information on the costs that are incurred in providing towers and associated infrastructure, and how these costs flow through to existing fee arrangements for accessing towers. Paragraph 5(2)(c) also makes clear that the ACCC must consider the costs of providing access (for example, relevant business practices and systems) as well as the costs of providing towers and associated infrastructure themselves.

It is expected that with this information the ACCC could then consider the relationship between the costs involved in supply and current fee arrangements.

Paragraph 5(2)(d) requires the ACCC to consider the effectiveness of current commercial and regulatory arrangements in enabling access to towers and associated infrastructure. This will require it to assess whether the existing settings are effective, however, the ACCC is not required or expected to undertake a formal technical review of the facilities access regime in Part 5 of Schedule 1 of the Act or the access regime in Part XIC of the *Competition and Consumer Act 2010*, nor implement any reviews under those provisions as a result of this direction. The focus of the inquiry is on the real world operating environment for access to towers and associated infrastructure and whether that can better support improvements in mobile coverage, capability and competition in regional, rural, remote and peri-urban Australia.

Paragraph 5(2)(e) directs the ACCC to examine the kinds of matters (including the impact of costs) infrastructure and tower providers consider in deciding to provide towers and associated infrastructure and provide access to that infrastructure. Paragraph 5(2)(f) requires the ACCC to consider how the kinds of matters described in paragraph (e) may affect the provision of greater mobile coverage. Together, the paragraphs will require the ACCC to consider how costs impact on investment decisions that underlie improvements in mobile coverage.

Paragraph 5(2)(g) requires the ACCC to have regard to the implications (if any) for the provision of access to towers and associated infrastructure of mobile carriers divesting their tower and associated infrastructure businesses. This notes that mobile carriers like Telstra, Optus and TPG have divested, or are divesting, themselves of their tower businesses and this may impact the dynamics of providing access to towers and associated infrastructure. The paragraph also identifies areas where the ACCC must consider such implications, namely the scope of access that may be offered, the terms and conditions of access, the fee arrangements and the kinds of considerations that contribute to establishing fee arrangements. Paragraph 5(2)(g) will ensure that the ACCC considers whether current actions by mobile carriers to divest their tower businesses will affect the nature of access and the terms of access.

Paragraph 5(2)(h) provides that matters the ACCC must consider in determining the feasibility of providing temporary mobile roaming services during natural disasters and emergencies include the technical feasibility of providing such services, the support systems and business processes required, and the associated time and costs expected in providing such services.

Subsection 5(3) provides that the ACCC must consult persons, bodies and agencies as applicable, and again without limitation in respect of the matters described in subsection (2). While the ACCC's inquiry will be public, four examples are provided to ensure the views of the relevant parties are sought. These are providers of towers and associated infrastructure, providers of other infrastructure that could similarly be used in supplying mobile telecommunications and other radiocommunications services, likely users of towers and associated infrastructure, and members of the community that may be interested in improvements in mobile coverage and/or temporary mobile roaming services to be provided during natural disasters and other such emergencies.

As the inquiry will be a public inquiry conducted in accordance with Division 3 of Part 25 of the Act, the ACCC must publish the fact that it is holding the inquiry and invite submissions. The ACCC may issue a discussion paper and may also hold public hearings. The ACCC must prepare a report setting out its findings of the result of the inquiry.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the  
Human Rights (Parliamentary Scrutiny) Act 2011*

### Telecommunications (ACCC Inquiry into Access to Regional Towers and Associated Infrastructure) Direction 2022

#### *Overview*

The purpose of the *Telecommunications (ACCC Inquiry into Access to Regional Towers and Associated Infrastructure) Direction 2022* (the Direction) is to direct the Australian Competition and Consumer Commission (ACCC) to undertake a public inquiry into the matters specified in the Direction.

Subsection 5(1) of the Direction specifies two main tasks of the inquiry:

- (a) access to towers and associated passive and active infrastructure provided by telecommunications and other infrastructure providers in regional, rural, remote and peri-urban areas within Australia, that can be used in the supply of mobile telecommunications and other radiocommunications services; and
- (b) the feasibility of temporary mobile roaming services to be provided during natural disasters and other such emergencies.

The Australian Government has had a longstanding interest in improving mobile coverage and the competitive supply of mobile services in regional, rural, remote and peri-urban Australia. The 2021 Regional Telecommunications Independent Review Committee has also made recommendations relating to industry and Government investment to improve mobile coverage, access to inputs for the supply of such services, new neutral host models and the feasibility of providing temporary mobile roaming services during natural disasters or emergencies. The direction and inquiry respond to these considerations.

The ACCC will conduct a public inquiry in response to the direction, and call for submissions. It must publish a report on its findings. The inquiry is expected to commence by 1 July 2022 and be completed within 12 months.

#### *Human rights implications*

The Direction is compatible with the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia. The Direction does not engage any of the applicable rights or freedoms. Access to telecommunications services is, however, increasingly seen as important to broader social, economic, political and cultural participation.

#### *Conclusion*

The Direction is compatible with human rights as it does not raise any human rights issues.