

Alan Jones interviews Allan Fels, former ACCC Chairman, about the impact of planning laws on grocery prices

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ALAN JONES: I've spoken many times about a 1997 Howard Government inquiry called Finding the Balance. It was an inquiry headed by the then minister, Peter Reith. It was to examine the war going on in shopping centres in Australia between the tenant and the owner of the shopping centre.

I've said a million times that war continues. It's just that over 11 years, the owner seems to have more heavy-hitting power and the tenant even less.

Remember, much of the evidence from the shopping centre tenants had to be submitted in-camera because of fears of victimisation by landlords and property managers. And that's the stuff we're dealing with.

There were a million-and-one recommendations from the inquiry, most importantly that there should be a uniform retail tenancy code drafted in consultation with industry participants. None of that's happened.

The report recommended that shopping centres should have to disclose the methods by which rent is calculated, that reviews should only be allowed when leases are being renewed, and that there should be a minimum five-year lease period. None of that's happened.

And of course, in these shopping centres, big business reigns supreme. Woolworths and Coles get everything cheaper than the little bloke, not just the produce they sell but the floor space they rent. Even the price they pay for their money. And that's supposed to be fair competition.

I spoke last year to Neil Byron, the Productivity Commissioner, who was conducting an independent analysis of the market for retail tenancies. This was an opportunity, we were told, for all stakeholders - small businesses, landlords, tenants, investors and consumers - to raise any concerns about the retail tenancy market.

Well, the Productivity Commissioner's report has been with the Rudd Government for some months now. Nothing has happened.

I've often talked about Erina Square on this program, Macarthur Square at Campbelltown. Small business tries to set up a business in these areas and the discrimination against them is mammoth in the price they pay for their money, in the price they pay for the rent, or on the flip side, the mammoth concessions given to big business as opposed to small business.

And I've said before that in Chatswood Chase the specialty small retailer occupies only 27 per cent of the space, but pays 80 per cent of the centre's income.

What chance does a small retailer have in Australia today when he's paying rents 125 per cent higher than the equivalent rents in America? What chance does he have if he's paying 10 times the rent that Woolworths or Coles or Myer or Kmart or Target pay?

Well, Professor Allan Fels is a former chairman of the ACCC, the Australian Competition and Consumer Commission. Today he's releasing a report commissioned by the Urban Taskforce, compiled by Professor Fels and Concept Economics. It's the most detailed analysis of the impact of planning policies on retail competition, and therefore the prices you pay.

Now, the report was commissioned by the Urban Taskforce. Their chief executive, Aaron Gadiel, said, under the New South Wales planning system, supermarkets and larger food stores are one of the most heavily regulated sectors of the economy, alongside mines, casinos and brothels, and that of course means that you are paying more.

Let's go to Professor Fels and see what he's about.

Professor Fels, good morning.

PROFESSOR ALLAN FELS: Good morning, Alan.

ALAN JONES: So you're saying the cost of groceries and basic household goods has been a significant topic of public debate, and that is affected by our planning laws.

PROFESSOR ALLAN FELS: Yes, the planning laws restrict competition. They basically protect the big shopping centres.

Incidentally, I heard you talking about the problems for small tenants in the big shopping centres, but there's a further very important dimension - the harm to consumers from the protection of big shopping centres from competition...

ALAN JONES: Absolutely.

PROFESSOR ALLAN FELS: ...all over Australia, especially Sydney, especially out there in the western suburbs, which are jacking up food prices.

ALAN JONES: And you're saying that the reform you're talking about could deliver 47,000 new jobs in New South Wales. What kind of reform?

PROFESSOR ALLAN FELS: Well, two sets of reforms. First of all, the general principle at the moment is that if you set up a new retail business and it would harm

existing big shopping centres, then it's generally blocked under the planning laws. That should be stopped. This is not a good principle.

ALAN JONES: Yes.

PROFESSOR ALLAN FELS: The consumer should come first. Competition necessarily involves harm to others.

The second thing is that...

ALAN JONES: Let me ask you a question on that.

PROFESSOR ALLAN FELS: Yes.

ALAN JONES: Why do you think government - is government in the hands of big business? Are they hand in glove? Why would a government put in place planning laws which prevent someone from acting as competition with big business?

PROFESSOR ALLAN FELS: They take too much notice of big business interests...

ALAN JONES: And the lobbying.

PROFESSOR ALLAN FELS: ...and consumers and small business come last.

ALAN JONES: That's absolutely right.

PROFESSOR ALLAN FELS: And it's interesting, however, that Australia is changing and we have got more and more competition in different parts of the economy. But in the retail area, we're 20 years behind. With, you know, the Hilmer Report and all those things, they got rid of a lot of anti-competitive restrictions, but retail is still protected, particularly the retail landlords.

ALAN JONES: Absolutely a thousand per cent correct. Who's listening to you?

PROFESSOR ALLAN FELS: Well, I think the Government has this opportunity because it has got urban planning going for New South Wales. But within the plans for the future, there are major restrictions on retail developments outside the big shopping centres. Within the big shopping centres, no restrictions on retail.

ALAN JONES: No. I mean, you take Bondi Junction. They are highly congested, all the things your report talks about. The cost of expanding transport infrastructure is mammoth, including road and rail. And you're saying we should take pressure off these highly-congested areas. But you've got Oxford Street now is virtually a morgue.

PROFESSOR ALLAN FELS: That's right. The - I mean, I'm in favour of having planning laws to protect the environment and that kind of thing...

ALAN JONES: Yes.

PROFESSOR ALLAN FELS: ...but these have gone much too far in preventing people who will give consumers a better deal, who are closer to where consumers live or where they work or where they travel.

ALAN JONES: Yeah.

PROFESSOR ALLAN FELS: You know, if you just go out...

ALAN JONES: And there's a much more personal element to the smaller retail outlet, isn't there?

PROFESSOR ALLAN FELS: That's right. You could - you know, the community would be better off if there were shopping places close to home. You'd meet people in the neighbourhood. It builds up social cohesion.

ALAN JONES: But they can't compete with those big Woolworths and Coles and Bondi Junctions, can they?

PROFESSOR ALLAN FELS: No. But I think the restrictions even on Coles and Woolies outside the big shopping centres are carried too far.

One of the interesting things though is that the protection of the big shopping centres has meant that there isn't a lot of space available, therefore any retailer that goes to a shopping centre, pays a very high rent. Our study shows, for example, that the typical rent might be, say, 20 per cent of turnover in a big shopping centre. Compare that with Europe, where our study shows it's about 10 per cent.

ALAN JONES: That's right.

PROFESSOR ALLAN FELS: Who cops the extra rent? The consumer in the end.

ALAN JONES: That's it. Or else the little fellow goes out of business.

PROFESSOR ALLAN FELS: Or the little fellow goes out of business.

ALAN JONES: Yeah. Just putting another hat on and one question to you, finally, putting another hat on, your former hat, the ACCC. Do we need to strengthen the Trade Practices Act so that we can prevent geographic price discrimination, predatory pricing, monopoly positions?

PROFESSOR ALLAN FELS: We need to greatly strengthen Section 46, the abuse of market power...

ALAN JONES: Absolutely.

PROFESSOR ALLAN FELS: ...at the moment it's impossible to get results.

ALAN JONES: But when you say that to government, I mean, you've got contact with all these people, what do they say? Do they look at you with...

PROFESSOR ALLAN FELS: Look, this area of law is really closely patrolled by big business, and no government wants to take it very far.

ALAN JONES: Hundred per cent correct. Good to talk to you, Allan Fels.

PROFESSOR ALLAN FELS: Thank you, Alan.

ALAN JONES: Isn't that extraordinary? This area of law is closely patrolled by big business, and no government wants to take it very far. Section 46. A former commissioner said the Trade Practices Act needs to be strengthened in those three areas - monopoly power, geographic price discrimination, and predatory pricing. And until we do those things, the consumer's being duded. Now he's saying in this new report, even in relation to planning laws.