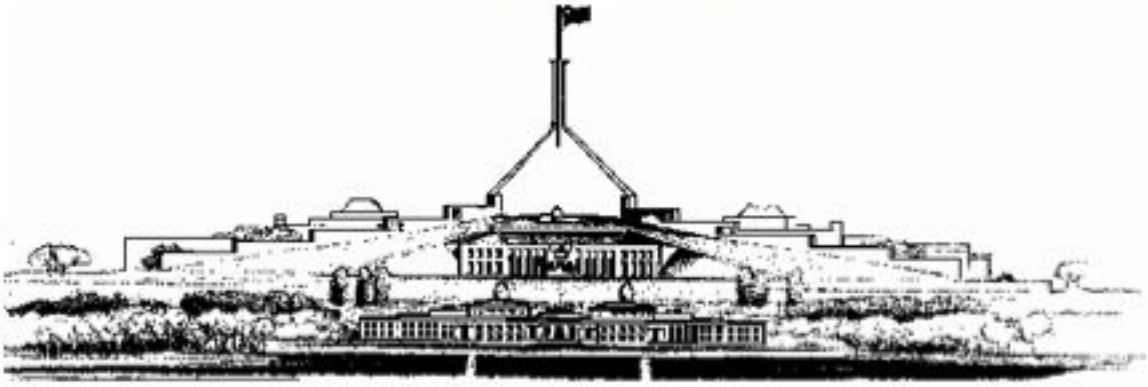
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 1999 [NO. 2]

Second Reading

SPEECH

Tuesday, 7 December 1999

BY AUTHORITY OF THE SENATE

SPEECH

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Speaker	Stott Despoja, Sen Natasha	**Question No.**	

Senator STOTT DESPOJA (SA) (5.05 pm)—The Australian Democrats have concerns with the Australia New Zealand Food Authority Amendment Bill 1999 (No. 2). The bill contains some identical terms to the Australia New Zealand Food Authority Amendment Bill 1999, the first one, which was referred to the Senate Community Affairs References Committee, to which Senator Evans referred. That was referred for quite comprehensive consideration. The committee handed down its report on 12 March this year, and the Australian Democrats did submit a dissenting report. Senator Bartlett and I outlined in that report some of our concerns—some of which are outstanding, even given this bill in its new state.

At the turn of the century and the millennium, people are considering an ever increasing number of issues and potential risks when buying their foods. These concerns can range from medical health risks to environmental, social, political and economic issues. This development means that new challenges and expectations have arisen for our food regulatory system. Food, of course, is an integral part of the social and cultural make-up of any society. As we embrace technological innovations and face the new millennium, our community requires greater autonomy in selecting foods and greater levels of testing. Our community requires greater information than ever before to determine which methods of food production they wish to embrace or encourage, which companies they wish to support and what additives they wish to ingest. The community needs to be able to avoid known allergens and, in the case of genetically modified foods, potentially unknown ones.

The bill in its current form does not go far enough to protect the wider interests of consumers and industry. The Democrats maintain that generally consumer and industry interests cannot be adequately represented together under the one food regulator. In many cases consumer and industry interests are conflicting and the ANZFA is put in a difficult position between a rock and a hard place somehow trying to reconcile the two. Unfortunately, underfunded and underresourced consumer groups are usually the parties whose concerns are less represented by the ANZFA at the end of the day.

However, there is one aspect in which consumer and industry interests are synonymous: consumer confidence. If consumers do not have confidence in their food regulatory system, they will not buy the product, in par ticular novel food products such as GM foods and nutriceuticals. The comprehensive community attitudinal survey published only yesterday, commissioned by Biotechnology Australia, concluded that Australian consumers had a general appreciation and knowledge of the potential benefits of biotechnology for the production, say, of medicinal components, clothing fibres and the like. However, the overwhelming majority of the Australian public did not support genetically modified foods and required equal information about the possible risks of biotechnology as well as information about the benefits of its application.

That is not to say that genetically modified foods are necessarily or intrinsically bad or that biotechnology can be put in the evil or saintly basket, if you like; it is just to say that consumers have these fears and we must address them. People have concerns about this burgeoning industry and they must be given information and thus consumer choice. As the incredibly complex relationship between food, health and medicine continues to intensify, consumers are requiring greater testing and information about their foods. We as legislators, in addition to industry and of course the ANZFA, must recognise and provide this for the Australian community.

The new objectives for the authority make inroads into addressing such concerns. I acknowledge that the objectives as amended specifically include the goal of a high degree of consumer confidence in the quality and safety of food produced. I maintain that this must be achieved by the ANZFA's first and foremost objective in relation to public health and safety. I acknowledge that proposed section 2A calls for `a high standard of public health protection throughout Australia and New Zealand' and that proposed section 10.1 states that `the protection of public health and safety' is the highest priority objective in developing food regulatory measures. Of course the Australian Democrats support these objectives although we maintain that the interpretation of these objectives must recognise the intersectoral and multidimensional nature of public health and safety.

Public health and safety has been defined as an improvement in physical disease preven tion at both a community and individual level. It is a set of comprehensive long-term community considerations in addition to short-term individualistic concerns and measures which are sustainable, social, ecological, educative and economic in focus and practice. The bill works in part towards such an understanding of public health. However, we believe that further improvements are required to strengthen the authority's educative and consultative operations.

The Biotechnology Australia community attitude report, which I mentioned previously, found that the public relies on the mainstream media, largely television and newspapers, for its information about biotechnology. This is clearly an inadequate situation. I believe that the Australian community is a bit more sophisticated than suggested by a debate at a level, say, that labels GM foods as Frankenstein-like. The government must set the standard and provide balanced, equal information to which industry and consumer groups can contribute in the public domain. When it comes to GM foods, the ANZFA has a responsibility to provide equal, balanced information on the technology itself and the food products that are produced by biotechnology.

Another concern that the Democrats stated as problematic in respect of the objectives of the bill was the unqualified promotion of consistency between domestic and international food regulatory measures. We were concerned that they would, or would have the potential to, lead to the lowest common denominator for food standards. Debate about international standards and international consistency has come at an opportune time, with the demonstrations and debate in Seattle for the third biennial meeting of the ministerial conference of the WTO pretty much fresh in all our minds. Australia is obliged under the WTO to be consistent with international standards wherever a standard is developed.

An exception is made when it can be demonstrated on good scientific principle that a change would undermine the protection of public health and safety in Australia. This, with the qualification of the bill's objective for consistency between international and domestic food standards without reducing the safeguards applying to public health and consumer protection, assists in overcoming many of the concerns that international consistency objectives would lead to standards of the lowest common denominator.

Another area of regulatory concern which the Democrats outlined in our dissenting report to the Senate committee was the regulation of nutriceuticals, particularly for the future. We are looking at a not-too-distant future when nutriceuticals are anticipated to hold an unprecedented area of supermarket shelf space. These functional food products with health and safety and preventative medicinal claims will be a means by which to achieve product recognition in a market that is vying for product differentiation. The Democrats maintain that such products, due to their human health claims and potential health benefits, should be under the jurisdiction of the Therapeutic Goods Administration. We must, as responsible legislators, be forward thinking and proactive in providing measures now to effectively set standards for the biotechnology and the food science advances of the future. We cannot afford to have a repeat of the lack of recognition that surrounded genetically modified foods when they first hit our shores in 1996.

The bill provides a new definition of food, delineating between the Therapeutic Goods Administration and the ANZFA. As my colleague Senator Bartlett and I stated in the dissenting report to the committee, all foodstuffs which claim health benefits due to the inclusion of one or more nutritional components and are demarcated from other products on the supermarket shelves should undergo independent scientific testing to back up those health claims. I am aware that the ANZFA and the TGA do consult over the definition of foods and drugs. We need a clear demarcation determined outside the reach of the industry interests and government.

The other proactive undertaking which we feel is required for the responsible use of nutriceuticals is linked to the public educative activities of the ANZFA. The Australian public should be made aware that isolating one or two substances from a food or a group of foods and adding it to a breakfast cereal and the like is not likely to mimic the effect of eating the whole food with its full complement of phtyochemicals intact. Unfortunately, the Democrats are not in a position to transfer responsibility for nutriceuticals to the TGA under this bill. We do support through the objective under section 10 of the bill to provide adequate information relating to food to enable consumers to make informed choices. That is something we have talked about for a long time. This should include balanced information about the possible health benefits of nutriceuticals. Consumer groups and health professionals have also registered concerns regarding the ability of consumers to extract information from food labels and nutritional panels that are on food products. There is a need in the community for a new education regime specifically targeted towards understanding Australian food standards and extracting information from the food labels.

Another common criticism of current regulation of foods is the lack of scientific testing and activity under Australia's food regulator. I believe that to be an effective food regulatory body the ANZFA must broaden its scientific base. It must be able to independently assess food applications and their safety to become a body which supports and facilitates innovation in food science and nutrition. I believe there is a great opportunity for Australia in the area of scientific research and development. Collaboration between the CSIRO, the National Health and Medical Research Council, the Therapeutic Goods Administration and the like should be encouraged. We certainly do not suggest otherwise.

The United States Food and Drug Administration provides a good example of facilitating development in this area. The FDA, through the Centre for Food Safety and Applied Nutrition, undertakes similar premarket approval of food to that of the ANZFA. It regulates genetically modified foods and has also recently revamped food labels to make it easier for consumers to get nutritional information about the foods that they are eating. In addition to these roles, it has a special office that is dedicated to special research skills and support and also facilitates the administration of the Joint Centre for Food Safety and Applied Nutrition with the University of Maryland. The link with the university is designed to ensure the critical science based foundation which independent research institutions provide to establish sound food safety policy—in addition, of course, to facilitating the innovation, research and development of food science.

I am not suggesting that Australia should mimic the food regulatory regime of the United States. However, considering the upcoming debate regarding the Interim Office of Gene Technology and the assessment and interaction of differing government agencies and departments under the office—and, additionally, the Innovation Summit that we have heard quite a bit about, which is coming up in February next year—I suggest that further consideration of interaction between research and regulatory endeavours should be undertaken. There is much to be gained in the areas of consumer health, food science and nutrition education by their simultaneous pursuit.

At present, self-regulation is used in part to address nutrient claims on food labels and in advertisements. Currently codes of practice have been developed under the ANZFA with industry bodies. In Australia to date, relevant industry bodies have developed most codes of practice, despite persuasion by industry bodies. This is a concern for two reasons: firstly, the close liaison between the ANZFA and industry in developing such codes puts into question the extent to which such regulatory measures represent consumer concerns; and, secondly, the lack of regulatory clout that voluntary codes of practice have. The Parliamentary Library Research Note No. 17 addresses the differences between codes of practice and standards. The paper notes conflict between the 1995 code of practice on nutrient claims in food labels and advertisements, which was intended `to provide a basis for voluntary self-regulation of nutrient claims by industry'.

On the other hand, the ANZFA nutrition labelling and standard proposal—proposal 167, `Nutrition Labelling'—states that it cannot be established if the standard proposal was developed, in part because the code of practice did not achieve the required outcome. Self-regulation is not appropriate for Australia's food regulatory system. It asks:

How can a consumer know whether the codes of practice are achieving desired outcomes or indeed whether or not they are in place in all situations that suggest them?

It concludes:

Increased use of codes of practice could generate more questions than answers.

The Democrats maintain that self-regulation and voluntary codes cannot stand alone to ensure public health and safety when it comes to food production and consumption. Codes of practice are not a substitute for food standards. The Biotechnology Australia community survey additionally found:

The public regard regulation and provision of information on biotechnology by the government as preferable to self-regulation by industry, particularly in relation to GM foods.

I think that similar conclusions can be drawn for the wider food regulation. When it comes to ensuring pathogen free foods and low levels of pesticides and other pollution contaminants, I believe that industry, like consumers, deserves enforceable food standards to protect the whole industry and consumers alike against the possibility of, say, the one Garibaldi amongst many smallgoods manufacturers. Many South Australians would be aware of that particular crisis.

Although the Democrats have not acted to prevent implementation of the ANZFA's proposed cost recovery provisions, we have several concerns regarding their operations. While the Democrats support charging those who profit from approval of foods—that is, those who have an exclusive, capturable commercial benefit—we hold reserves about its application. Cost recovery was deemed as undesirable by both consumer and industry interests in submissions to the Senate inquiry. I note that Coles supermarket stated that cost recovery may lead to distortions in setting the working programs. Such concerns are legitimate and must be kept in mind when the newly proposed three-year forward plan schedule for the assessment of food products is operating.

The Democrats consider the general shift of food regulation to voluntary codes with concern. Industry managed codes of practice should not be considered as a general alternative to standards. When it comes to consumer health and safety, the Australian community deserves statutory measures—nothing weaker. As we stated in our dissenting report, the South Australian Garibaldi smallgoods food poisoning and the estimated $2.5 billion cost per annum to the community for food poisoning should be ample impetus to establish codes of practice as an extra precaution and not as a substitute for food standards.

The use of voluntary codes of conduct are of more concern when considered in conjunction with the decrease in regulatory powers of the ANZFA. The Democrats regard the general substitution in the bill for food standards to food regulatory measures with concern. Industry managed codes of practice should not be considered as a general alternative to standards. When it comes to consumer health and safety, the Australian community deserves statutory measures.

Presently the ANZFA does not have the ability to implement or enforce food standards. Each food standard is referred with the ANZFA's recommendation to the Australia New Zealand Food Council, which approves, amends or rejects recommendations completely or in part. The Food Council is a vital review mechanism which assists in maintaining the ANZFA's accountability. The use of the ANZFA for food regulatory issues of minor significance, rather than the Australia New Zealand Food Council, undermines public input into the regulatory process, and I will be moving amendments that we believe satisfy some of these concerns.

The integral role that the Australian and New Zealand health ministers played in the labelling of genetically modified foods is a very important example of the role that the council plays. It may be argued that the issue of labelling of genetically modified food would not have been considered by the ANZFA as an issue of significance to the public and therefore more so to the health ministers. However, was it suitably significant when the words `substantial equivalence yardstick' were first bandied about by the ANZFA several years ago? I would argue that public awareness of this issue has grown, particularly in recent times, and may have been deemed less significant when food regulators were first considering its regulation.

Public debate is a metamorphosing phenomenon. It is undulating, if you like. It is for the ANZFA to determine what is of minor significance, which is undefined in the bill. Is that what is going to happen? Is it up to them? At what stage of public debate will significance be determined? The removal of the Australia New Zealand Food Council in any circumstances undermines the accountability of the ANZFA and therefore public confidence in our regulator, which in turn is detrimental to the food industry.

The bill extends the ANZFA's powers to make food regulations independent of the council in certain circumstances. The bill allows for the ANZFA to implement regulation in situations which are considered to be of less significance, though what is `lesser' is not actually specified. Such decisions by the ANZFA will become regulation within 28 days of the decision if the council, the ANZFC, does not object. As we stated in our report, the ANZFA will be required to undertake public consultation as it deems appropriate. However, that 28-day window leaves little time for the community interests to be able to come together and to effectively lobby before that decision is implemented.

That being said, I also recognise that the current system is inappropriate as decisions can be postponed by the council, as was the case with the decision in relation to genetically modified foods. Such postponement, which allows the health ministers to pursue a non-labelling position without appropriate approval for an extended period of time, is not acceptable.

The Democrats stand by our commitment stated in the report that we cannot support the increased regulatory powers of the ANZFA as it restricts another avenue for public input into the decisions about the food regulation process. We believe in accountability, and we believe in transparency. I will be moving amendments shortly that will reflect our views. I anticipate that we will see more legislation dealing with food regulatory issues. *(Time expired)*