

Credit Contracts & Consumer Finance Act: Background on s99(1A)

6 June 2015	<ul style="list-style-type: none"> Section 99(1A) was inserted into the CCCFA. This amendment was approved under a John Key, National led government.
May 2016	<ul style="list-style-type: none"> ANZ identified a coding error caused incorrect Loan Variation letters to be sent to customers who varied their loans between 30 May 2015 and 28 May 2016.
17 May 2016	<p><i>NZ Bankers Association letter to MBIE:</i></p> <ul style="list-style-type: none"> NZ Bankers Association write to MBIE outlining their concerns the impact non-compliance would have on one of their member banks and seeking a meeting to discuss the issues and provide practical examples of how non-compliance might happen and the implications of refunding the cost of borrowing as required under s99(1A). NZBA's conclusion on s99(1A) is: <ul style="list-style-type: none"> <i>“could have serious and harsh implications for a lender. In particular, the impacts are significant if a long period of time has elapsed before the disclosure breach is discovered or if the disclosure breach affects many loans”</i>
Nov 2016	<p><i>MBIE discussion paper released:</i></p> <ul style="list-style-type: none"> Following approval from Cabinet on 19 Oct 2016, MBIE release a Discussion Paper inviting submissions on different options that could be considered for the amendment of s99(1A).
9 Dec 2016	<p><i>NZ Bankers Association Submission to MBIE:</i></p> <ul style="list-style-type: none"> NZ Bankers Association, on behalf of 15 registered banks including ANZ and ASB, provides feedback on the discussion paper, supporting Option E which repeals s99(1A) with retrospective effect. NZBA's submission contained a number of hypothetical examples reflecting the impact of s99(1A) including where a creditor issues variation letters which contains an error due to a template fault. The example goes onto explain if 30,000 customers received incorrect variation letters and this wasn't corrected for a period of 1 year, the refund of COB could be ~\$670m

10 May 2017	<ul style="list-style-type: none"> • EGI Minute of Decision notes an agreement that s99(1A) of the CCCFA should be amended so that in future a lender has the right to apply to a court for relief from the presumption of 100% forfeiture of all interest and fees. The also agreed that no lender should be entitled to relief for the period between breach and the amendment coming into force. • The recommendation from Hon Jacqui Dean, Minister of Commerce and Consumer Affairs outlines the principle of fairness to both lenders and borrowers as the basis for limiting the retrospective nature of s99(1A).
19 June 2017	<ul style="list-style-type: none"> • ANZ advise the Commerce Commission the loan calculator issue resulted in incorrect disclosure information being sent to customers.
20 June 2018	<ul style="list-style-type: none"> • Hon Kris Faafoi, Minister of Commerce and Consumer Affairs confirms the amendment to s99(1A) to allow lenders who breach their obligations after March 2020 to apply to the Court from relief of having to pay 100% of the interest and fees i.e., lenders who breach their obligations prior to March 2020 must forfeit the interest and fees.
18 June 2019	<p><i>NZ Bankers Association Submission to Finance & Expenditure Committee:</i></p> <ul style="list-style-type: none"> • NZ Bankers Association, on behalf of 17 registered banks provides a submission on the Credit Contracts Legislation Amendment Bill • NBA's submission (pg. 15) acknowledges that law changes are not usually retrospective, yet requests retrospectivity with regards to s99(1A) claiming it could have disproportionate impact on creditors.
September 2019	<ul style="list-style-type: none"> • ASB advised the Commerce Commission they had failed to provide customers who varied their loans between 6 June 2015 and 18 June 2019 with correct disclosure.
March 2020	<ul style="list-style-type: none"> • Sections 95A and 95B come into effect that provide lenders the right to apply to the Court for relief from the consequences of breaching disclosure obligations.