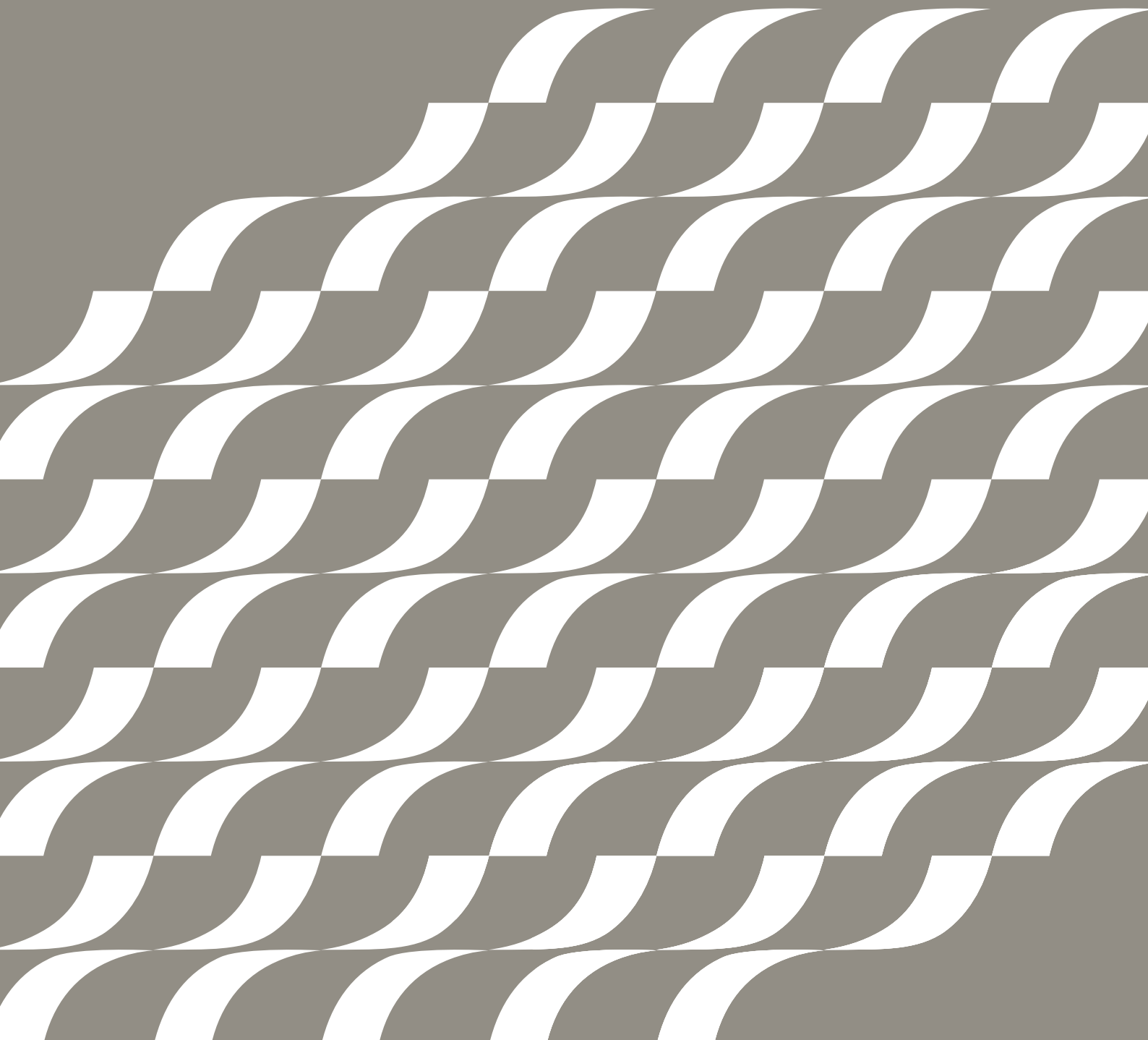




Pawnbroking Guidelines

March 2025



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Purpose of guidelines

- 1 These guidelines explain how the Credit Contracts and Consumer Finance Act 2003 (the CCCF Act) applies to pawnbroking contracts.
- 2 That the CCCF Act applies to pawnbroking contracts has been confirmed in recent case-stated proceedings brought by the Commerce Commission: Commerce Commission v National Pawnbrokers Association of New Zealand [2024]. You can read the judgment [here](#).
- 3 The obligations applying to pawnbrokers under the CCCF Act are in addition to obligations pawnbrokers have under the Secondhand Dealers and Pawnbrokers Act 2004 (the SDP Act).
- 4 These guidelines explain what a pawnbroking contract is and what obligations pawnbrokers have under the CCCF Act.
- 5 These guidelines are not exhaustive and are not intended to be legally binding.

What is a pawnbroking contract?

- 6 A pawnbroker is a person who:¹
 - 6.1 in expectation of profit, gain, or reward, lends money on the security of goods of which the person takes possession, but not ownership; and
 - 6.2 who is not a secondhand dealer or the employee of a secondhand dealer and pawnbroker.
- 7 Key features of a pawnbroking contract are that they provide for:²
 - 7.1 A redemption date, which is the last day on which the pawnbroker must hold the goods for redemption by the pledger (and after which, the pawnbroker can sell the goods);³
 - 7.2 A redemption price, which is the amount of money a pledger must pay in order to redeem their goods before the redemption date;⁴ and
 - 7.3 The amount of money advanced to the pledger on the goods.⁵

1 Section 4, SDP Act.

2 In accordance with ss 51 and 59 of the SDP Act. Section 59 of the SDP Act sets out the requirements of a 'pledge ticket', which includes the information at s 51(2)(b) to (h). Section 51 requires pawnbrokers to keep a record of this information.

3 As defined in s 58 of the SDP Act.

4 As defined in s 57(1) of the SDP Act. This comprises the amount of money advanced on the goods "plus" the redemption fee payable by the pledger on redemption of the goods (s 57(1)(a) and (b)).

5 This must be noted on the 'pledge ticket' pursuant to s 59(2)(c) and s 51(2)(f) of the SDP Act.

Pawnbroking contracts are consumer credit contracts

- 8 The case stated judgment confirms that a pawnbroking contract is a credit contract for the purposes of the CCCF Act.⁶
- 9 The judgment also confirms that a pawnbroking contract constitutes a security interest in the pledged goods for the purposes of the definition of consumer credit contract in the CCCF Act.⁷
- 10 This means that a pawnbroking contract will be a consumer credit contract for the purposes of the CCCF Act where the pledger is a natural person and the credit is intended to be used wholly or predominantly for personal, domestic or household purposes.

What CCCF Act obligations apply?

- 11 All of the obligations in the CCCF Act of a lender under a consumer credit contract will apply to a pawnbroker in relation to a pawnbroking contract unless exempt.

Exemption from Part 2 of CCCF Act

- 12 Section 15A of the CCCF Act provides that pawnbroking contracts are exempt from Part 2 of the CCCF Act if:⁸
 - 12.1 the contract was entered into by a pawnbroker⁹ in the ordinary course of the pawnbroker's business in accordance with the SDP Act; and
 - 12.2 in the case that the pledger is in default of his or her obligations under the pawnbroking contract or does not redeem his or her pawned goods on or before the redemption date, the pawnbroker's only right of recourse is under section 63 of the SDP Act.

CCCF Act obligations applying

- 13 For pawnbroking contracts that are exempt from part 2, the key provisions of the CCCF Act that apply are (non-exhaustive):
 - Certification requirement
 - Publication of contract terms and costs of borrowing
 - Responsible lending
 - Annual return obligation

⁶ Commerce Commission v National Pawnbrokers Association of New Zealand [2024] NZHC 1011 at paragraph [40].

⁷ Section 11(1)(c)(ii). National Pawnbrokers, at paragraph [44].

⁸ Section 15A of the CCCF Act. Part 2 of the CCCF Act contains provisions relating to (among other things) disclosure, cancellation, fees, unforeseen hardship, and due diligence.

⁹ As defined in s 4 of the SDP Act.

Certification

- 14** Pawnbrokers must be certified by the Commerce Commission before they can offer pawnbroker contracts.¹⁰
- 15** The Commission will certify a pawnbroker for the service of 'Creditor under a credit contract – Consumer credit contract' where we are satisfied that the pawnbroker entity's directors and senior managers (if the pawnbroker is a company) are fit and proper persons to hold their positions.¹¹ To be 'fit and proper', a person must be financially sound, honest, reputable, reliable and competent to perform their role.
- 16** Before a pawnbroker can be certified by the Commission and registered on the Financial Service Providers Register they will also need to be a member of an approved dispute resolution scheme.
- 17** Once certified pawnbrokers must notify the Commission of any **prescribed change** that could affect their certification within 10 working days of knowing of the change.¹² The changes are if a director or senior manager:
- is appointed or has resigned, is removed, or otherwise ceases to hold their positions; or
 - has been charged with, or convicted of, a crime punishable by imprisonment in New Zealand or overseas; or
 - is adjudicated bankrupt or is likely to be adjudicated bankrupt (whether in New Zealand or overseas); or
 - is a director or senior manager of a corporate entity that has been placed into liquidation, receivership, or voluntary administration in New Zealand or overseas; or
 - has been prohibited from acting as a director or promoter of a company or taking part directly or indirectly in the management of a company in New Zealand or overseas; or
 - has been prohibited from providing credit or other financial services in New Zealand or overseas; or
 - is a director or senior manager of another corporate entity, and a relevant proceeding or action has been commenced or taken against either or both of that corporate entity or that person as a director or senior manager of that corporate entity; or
 - has relevant proceeding or action has been commenced or taken against a certified person and/or a director or senior manager.
- 18** Further information about the certification obligation and how to apply is available on the Commission's [website](#) and in our [Certification guidance](#).
- 19** It is an offence for a pawnbroker to enter into a pawnbroking contract when not certified and required to be. On conviction the Court may impose a fine of up to \$600,000 for a corporate entity or up to \$200,000 for an individual.

¹⁰ Unless exempt because they are licensed by the Financial Markets Authority or Reserve Bank of New Zealand. Part 5A of the CCCF Act.

¹¹ Section 131G(1) of the CCCF Act.

¹² Section 131R of the CCCF Act and regulation 25 of the Credit Contracts and Consumer Finance Regulations 2004.

Publication of contract terms and costs of borrowing

- 20** Pawnbrokers must ensure that their standard form pawnbroker contract terms are publicly available from their business premises and must display prominently and clearly on those premises a notice that a copy of those terms is available on request (free of charge).¹³ If the pawnbroker has an internet site, they must display prominently and clearly a copy of the standard form contract terms on that site.
- 21** Pawnbrokers must also ensure that information about the costs of borrowing under their pawnbroking contracts are publicly available from their business premises. For pawnbrokers this should, in the Commission's view, include the redemption fee. Pawnbrokers must display prominently and clearly at those premises a notice that a copy of the information about costs of borrowing is available on request (free of charge). If the pawnbroker has an internet site, they must display prominently and clearly their costs of borrowing.¹⁴

Responsible lending

- 22** Pawnbrokers must be responsible lenders and comply with the lender responsibility principles in the CCCF Act.¹⁵
- 23** The overarching responsibility is that a pawnbroker must at all times act with the care, diligence and skill, of a responsible lender before providing credit under a pawnbroking contract and in their subsequent dealings with the borrower.¹⁶
- 24** There are also lender responsibilities relating to suitability, affordability, record keeping, informed decision, advertising and treating the borrower reasonably and ethically when problems arise. These are discussed further below.

Suitability

- 25** A pawnbroker must make reasonable inquiries before entering into a pawnbroking contract, or making a material change to the contract, so as to be satisfied that it is likely that the credit provided under the contract will meet the borrower's requirements and objectives (i.e. that the pawnbroking contract is **suitable** for the borrower).¹⁷

¹³ Section 9J of the CCCF Act.

¹⁴ Section 9K of the CCCF Act.

¹⁵ Part 1A of the CCCF Act.

¹⁶ Section 9C(2)(a) of the CCCF Act.

¹⁷ Section 9C(3)(a)(i) of the CCCF Act. Compliance with this lender responsibility includes compliance with the prescriptive inquiries required by regulation 4AA of the Regulations.

Affordability

- 26 A pawnbroker must make reasonable inquiries before entering into a pawnbroking contract, or making a material change to the contract, so to be satisfied that it is likely that the borrower will make the payments under the contract without suffering substantial hardship (i.e. that the pawnbroker contract is **affordable** for the borrower).¹⁸
- 27 The **Responsible Lending Code**¹⁹ (the **Code**) provides non-binding guidance to lenders on how they may comply with the lender responsibility principles.
- 28 Chapter 5 of the Code sets out guidance for lenders on assessing the affordability of a loan and includes guidance specific to assessing affordability of a pawnbroking contract. The Code guides that in assessing whether it is likely the borrower can make payments on a pawnbroking contract without substantial hardship a pawnbroker may inquire into and assess:²⁰

EITHER

- A whether the borrower can pay the redemption price through monetary payments without substantial hardship by making inquiries into a borrower's income, expenses and likelihood of default (in accordance with the standard Code guidance for assessing any loan);

OR

- B whether the borrower can make the payments through a sale of the pledged item without substantial hardship. Sale of the pledged item may cause substantial hardship to the borrower if the item is essential to the borrower. The lender should be satisfied that an item is not essential, taking into account the borrower's circumstances.

Record keeping

- 29 Pawnbrokers must **keep records** about the responsible lending inquiries made that demonstrate how the pawnbroker satisfied themselves that the pawnbroking contract or material change was suitable and affordable for the borrower.²¹ The records must be provided to the borrower, a dispute resolution scheme, or the Commerce Commission upon request.

Advertising

- 30 Pawnbrokers must act with care, diligence and skill in any advertising for credit²² as well as ensure that any advertising is not, or is not likely to be, misleading, deceptive or confusing to borrowers.²³ Pawnbrokers must also comply with the prescriptive Advertising Standards in the Credit Contracts and Consumer Finance Regulations 2004 (**Regulations**).²⁴

18 Section 9C(3)(a)(ii) of the CCCF Act.

19 Version July 2024.

20 Paragraph 5.35 of the Code.

21 Section 9CA.

22 Section 9C(2)(a)(i).

23 Section 9C(3)(b)(i)(B).

24 Section 9C(3)(b)(i)(A) and regulations 4AAAP to 4AAAU.

Informed decision

- 31** Pawnbrokers must assist the borrower to reach an **informed decision** as to whether or not to enter into the pawnbroking contract and to be reasonably aware of the full implications of entering into the contract, including by ensuring that:²⁵
- 31.1** the terms of the agreement are expressed in plain language in a clear, concise, and intelligible manner; and
 - 31.2** any information provided by the lender to the borrower is not presented in a manner that is, or is likely to be, misleading, deceptive, or confusing.

Treating borrowers ethically

- 32** Pawnbrokers must treat the borrower **reasonably** and in an **ethical manner**, including when breaches of the contract have occurred or may occur or when other problems arise.²⁶

Annual return

- 33** Pawnbrokers must provide an annual return to the Commission each year covering the period 1 April to 31 March.²⁷
- 34** Returns are due by 30 June each year and must contain the information specified in the Regulations, which includes the number and value of new contracts entered into during the year and number and value of material changes to contracts.
- 35** Further information about the annual return obligation and how to submit a return is available on the Commission's [website](#).

²⁵ Section 9C(3)(b) of the CCCF Act.

²⁶ Section 9C(3)(d).

²⁷ Section 116AAA of the CCCF Act and r 29 of the Regulations.

Consequences for any potential breach

- 36** A breach by a pawnbroker of the applicable obligations under the CCCF Act will attract relevant penalties and sanctions. For information about the Commission's enforcement approach please refer to the Commission's **Enforcement Response Guidelines**.

This is a guideline only and reflects the Commission's view. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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Phone: 0800 943 600

Write: Contact Centre, PO Box 2351, Wellington 6140

Email: contact@comcom.govt.nz

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