

Week 1 Summary + “Must Knows” (Property & Commercial Law HT1, 2026)

1) The big picture: what Week 1 is really about

Week 1 sets up **two protective frameworks** that often travel together in practice:

- **Consumer credit law** = regulates lending to individuals (and some related products) under the **NCCPA + National Credit Code (NCC)**, with a strong consumer-protection focus.
- **Guarantee law** = common law/equity rules + statutory overlays, because guarantees often involve vulnerable guarantors.

A. Consumer Credit — what you must know

2) The regulatory “ecosystem”

NCCPA = licensing + conduct + responsible lending.

Credit providers, brokers, intermediaries engaging in “credit activity” generally need an **Australian Credit Licence (ACL)** (ASIC regulates this).

Licensees must act “**efficiently, honestly and fairly**” (general conduct).

Responsible lending: must assess **unsuitability** before lending.

Must know test for “unsuitable”: consumer can’t meet obligations **without substantial hardship** or it doesn’t meet their objectives.

3) When the National Credit Code applies (scope)

Use the **4-part filter** (NCC s 5(1) idea):

1. debtor is a **natural person** (or strata corp)
2. purpose is **personal/domestic/household** (or residential investment property)
3. there is a **charge** (fees/interest)
4. provider is in the **business** of providing credit

4) Mandatory disclosure: the “Key Requirements” (high exam value)

Section 17 disclosures are treated as **Key Requirements**, meaning serious consequences if missing.

Minimum items to memorise:

- **Amount/limit of credit**
- **APR**
- **How interest is calculated**

- **Total interest payable** (if ascertainable)
- **All fees/charges**
- **Repayment details**
- **Insurance/commissions**

Also: **annual cost rate cap 48%** (NCC s 32A).

5) “Special products” you must be able to spot

- **SACC (payday loans):** under \$2,000 → fee caps **20% establishment + 4% monthly** (NCC s 31A).
- **Consumer leases:** hire goods with no right/obligation to buy; total payments are capped by a statutory formula.
- **Reverse mortgages:** include “**no negative equity**” style protection (debtor can’t be required to pay more than market value).
- **BNPL:** moving into regulation as “low cost credit contracts” with licensing + modified responsible lending expectations.

6) What happens when things go wrong: enforcement + debtor relief

Enforcement

- Usually a **default notice giving at least 30 days** is required before enforcement (NCC s 88).
- Limits on repossession of mortgaged goods if under the **25% / \$10,000** threshold without court consent (NCC s 91).

Debtor relief

- **Hardship notice** → request variation if unable to meet obligations (NCC s 72).
- **Unjust transactions** → court can reopen contract/mortgage/guarantee if “unconscionable, harsh or oppressive” (NCC ss 76–77).
- **Unconscionable charges** → court can reduce/annul unfair rates/fees (NCC s 78).

B. Guarantees — what you must know

7) Guarantee vs indemnity (don’t lose easy marks)

- **Guarantee** = **secondary** liability (guarantor answers if debtor defaults).
- **Indemnity** = **primary** liability (indemnifier promises to keep creditor harmless regardless of default).

8) Formation essentials