Property Management

Policy

Date effective: 3 September 2020

Coronavirus (COVID-19) modifications in place:

- Entry to the premises to carry out non-emergency repairs or maintenance will continue with at least 48 hours notice at a time agreed by the tenant under section 11 of the *Residential Tenancies COVID-19 Modification Notice 2020*. Notice may be written or oral.

1. Purpose

To guide the appropriate management of the condition of premises owned or leased by the Department of Local Government, Housing and Community Development (the Department) to ensure that the Department's asset is protected and that premises are habitable and meet all health and safety requirements.

2. Scope

This policy applies to premises owned or leased by the Chief Executive Officer (Housing), for the purpose of residential accommodation. This policy does not apply to properties that are not leased under the *Residential Tenancies Act 1999*.

3. Policy detail

The Department will provide properties that are safe, secure and habitable as specified under the *Residential Tenancies Act 1999* and/or any other relevant legislation.

3.1. Pest control management

Under section 48 of the *Residential Tenancies Act 1999*, the Department must ensure that the premises are habitable, meet health and safety requirements that apply to the tenancy, and that the premises are reasonably clean when the tenancy commences.

During the tenancy, the Department may undertake pest inspection programs or preventative treatments to eradicate pests that pose a significant risk to the structural integrity of premises, for example, to prevent or treat termites.

Tenants have responsibility under section 51 of the *Residential Tenancies Act 1999* to not maintain the premises in an unreasonably dirty condition, allowing for reasonable wear and tear, and to not intentionally or negligently damage the premises.

Unreasonably dirty premises attract pests including cockroaches, rats, mice, ants and other insects and vermin. Pests present during the tenancy are the responsibility of the tenant. Pest infestations due to the premises being maintained in an unreasonably dirty condition or due to intentional or negligent damage by the tenant will be managed in line with the Tenant Damage policy and section 3.2 of the Tenancy Agreement Breach policy.

3.2. Security management

The Department is responsible for providing and maintaining secure premises including doors, windows, locks and other security devices on all properties. If the security of the premises is compromised, the Department will fix the damaged or faulty item in accordance with Section 63 of the *Residential Tenancies Act 1999*. If a tenant intentionally or negligently causes or permits damage to the premises or additional property the Department may repair the damage and recover from the tenant compensation in accordance with Section 122 of the *Residential Tenancies Act 1999*. A tenant may seek to undertake repairs themselves (at their own cost), with the Department's consent.

The Department provides a full set of keys to tenants upon signing a new tenancy agreement. From that point forward, the tenant is responsible for security of keys and all costs for maintaining the keys. Tenants must obtain approval to change existing locks or add new locks, except in the case of an emergency. If locks are changed in an emergency, the tenant must provide, as soon as possible, a copy of any new keys to the Department. The tenant must return a full set of keys (including any duplicates) at the end of the tenancy, or pay the cost for the Department to replace the keys and locks.

A tenant is not considered responsible for damage when the damage is the result of criminal activity. In cases where the damage is the result of criminal activity, refer to the Tenant Damage policy.

3.3. Tree management

Housing will remove trees from its properties and branches that are encroaching from a neighbouring property if they:

- present an immediate threat to health, life or dwelling by way of:
    - falling branches;
    - dropping fruit on paths that may cause people to slip;
    - protruding roots in walkways that could be a trip hazard; or
    - cause tenants or neighbours to have an allergic reaction.
- are causing significant maintenance problems such as trees growing under eves or in contact with buildings, trees with roots that are causing damage to pipes or other critical parts of the building or premises.

3.4. Water management

The Department encourages responsible water usage by tenants. In accordance with Section 118 of the *Residential Tenancies Act 1999*, the Department can request a tenant pays charges for water that the owner supplies to the premises if outlined in the tenancy agreement and the premises are individually metered. For individually metered premises, tenants are responsible for excess water charges. Excess water is where consumption exceeds 500 kilolitres per year (1 October to 30 September), or in the case of any broken period, a pro rata amount in accordance with that period.

If high water usage is due to a maintenance problem (e.g. leaking pipes or taps) and the tenant informed the Department, in a timely manner, the Department may agree to waive the charges in full or in part. Tenants should notify the Department of any leaks or water damage to the property. If urgent repairs are needed, the Department will fix the damage or faulty item in accordance with Section 63 of the *Residential Tenancies Act 1999*.

3.5. Fence management

The Department is responsible for maintaining existing boundary fences on properties to ensure that they meet the safety requirements specified under the *Fences Act 1972*. The Department can give consideration to upgrading or installing fencing on properties that are either facing or backing onto a busy road.

When damage to an existing fence occurs, the Department and the owner of the adjoining land are equally liable to contribute for the cost of repair to an existing dividing fence, in accordance with section 14 of the *Fences Act 1972*. Where a tenant intentionally or negligently damages an existing fence, refer to the Tenant Damage policy.

In remote communities the Department is not required to repair a damaged fence unless:

- the tenant and the Department both agree that the fence should be repaired; or
- it impacts on the safety of the tenants and/or other community members.

3.6. Fire and risk management

On commencement of a tenancy, the Department is responsible for the safety systems required to be installed to ensure its properties meet statutory obligations. This includes smoke alarms and residual current devices. The Department will repair or replace safety systems identified as faulty through its own periodic inspection or as identified and notified by the tenant.

The Department will test and clean all smoke alarms within 30 days before the start of a tenancy in accordance with the requirements under regulation 13D of the *Fire and Emergency Regulations 1996*. Tenants must test and clean smoke alarms regularly (at intervals of not more than 12 months) to ensure they are in working order. If they are not in working order, tenants must notify the Department as soon as practicable.

3.7. Climate management

The Department recognises differences in climatic conditions across the Northern Territory and works to provide premises with appropriate cooling requirements for the local climate.

In accordance with the National Construction Code, the Northern Territory is divided into two discrete climatic regions, tropical and arid (see Appendix A). Tropical regions (zone 1) are classified as hot humid summers and warm winters and arid regions (zone 3) are classified as hot dry summers with warm winters.

As a minimum standard for new premises, the department provides mechanical cooling in zone 3 premises and ceiling fans in zone 1 premises. Where existing premises are without a cooling mechanism, tenants may make an application to the department for the installation of mechanical cooling in accordance with section 3.8 of this policy.

3.8. Alterations or additions

3.8.1. Tenant alterations and additions

The department understands that tenants may want to make changes to premises to improve functionality.

In accordance with the *Residential Tenancies Act 1999*, tenants must obtain written consent from the Department prior to making any alteration or addition to the premises or ancillary property. The

Department assesses alteration and addition applications on a case by case basis as requests are specific to individual premises. Prior to making an application for an alteration or addition, tenants are encouraged to consider the:

- installation, certification and ongoing operating and maintenance costs; and
- possibility of relocation from one premises to another in accordance with the Department's Public Housing Transfers policy.

In assessing an application for an alteration or addition, the Department will consider the impact to the structural integrity of the premises and the safety of the premises.

The below classifications provide examples of the types of alterations or additions that may be approved by the Department:

Minor alterations include, but are not limited to:

- Picture hooks
- Fitting curtains or blinds
- Irrigation systems

Major alterations include, but are not limited to:

- Air conditioning
- Heating
- Pergolas
- Satellite dishes
- Garden sheds
- Carports

The Department does not permit the installation of swimming pools (in ground or above ground), spa pools or fishponds.

Major alterations must be completed in accordance with relevant legislation and completed to a reasonable standard. It is the responsibility of the tenant to provide appropriate building permits and certification. Premises that are not owned by the Department that are under a lease arrangement (e.g. social head leases, private head leased government employee housing, remote housing) may require additional approvals from the owner of the premises as stipulated in the respective lease agreements.

The tenant is responsible for installation, certification and ongoing maintenance costs associated with the alteration or addition.

A tenant may remove a fixture affixed to the premises by the tenant, unless its removal would cause damage to the premises or ancillary property. Tenants are encouraged to discuss the removal of a fixture with the Department before carrying out removal. Where removal or installation of a fixture results in damage to the premises or ancillary property the tenant must notify the Department and have the damage repaired.

3.8.2. Department alterations or additions

The Department may alter premises to appropriately accommodate tenants with additional housing related needs. These alterations must be essential to achieve a satisfactory level of comfort and safety for the

tenant. The tenant will be required to provide documentation to support their request in accordance with the Identification and Documentation policy.

Minor alterations (such as handrails or door ramps) will generally be approved where supporting documentation is provided. Major alterations (such as structural changes to the dwelling) may be refused if a transfer to a special purpose dwelling is possible. Where there is a request for major alterations, consideration will be given to the cost involved and the suitability of the premises for modification. An Occupational Therapist or qualified health professional must provide supporting documentation, outlining any special alteration needs of the tenant.

Tenants who are at risk of domestic and family violence may have need for additional security features in accordance with the Domestic and Family Violence policy.

3.9. Asbestos management

The Department protects the health and safety of tenants, staff and contractors by minimising their exposure to asbestos containing material under the *Work Health and Safety (National Uniform Legislation) Act 2011*. This includes ensuring that potential asbestos hazards in properties are maintained appropriately to minimise risk.

Tenants may not make any alterations or modifications to their properties without Department approval. The requirement for tenants to seek approval protects Department property from being damaged, and minimises potential risk of exposure to asbestos containing material. Where suspected asbestos containing material is damaged, tenants must immediately report the damage to the Department.

The management and removal of asbestos must be in accordance with the current legislation.

3.10. External appearance of a property

Departmental officers work across the Northern Territory. In the course of their duties they may incidentally observe the conditions of other Department properties. If a Departmental officer notices that the external appearance of a premises is in an unreasonably dirty condition, the officer may advise the tenant of this observation and remind the tenant of their responsibilities under the *Residential Tenancies Act 1999*.

Such observations may lead to an inspection of the premises under section 70 or section 72(b) of the *Residential Tenancies Act*. Observations of premises in an unreasonably dirty condition may be used as the basis for issuing a notice to remedy a breach of a tenancy agreement, in accordance with section 51 of the *Residential Tenancies Act 1999*.

4. Decision-making (delegation and discretion)

The Chief Executive Officer (Housing) may delegate a power or function under the *Housing Act 1982* or other Act. Delegated officers may make decisions on behalf of the Chief Executive Officer (Housing) in line with the Department's Housing Delegations and Financial Management Delegations.

A discretionary decision may be made outside the general application of policy if it supports the policy intent, will prevent a client from being unfairly disadvantaged, and is in line with the Department's delegations and legislative obligations. Refer to the Discretionary Decision Making policy.

5. Complaints and/or appeals

If a client is not satisfied with either a decision or action of the Department, they can access the Department's complaints and/or appeals processes. For further information, please refer to the Complaints and/or Appeals policies.

6. Review of the policy

If at any time the legislative, operating or funding environment is so altered that the policy is no longer appropriate in its current form, the policy shall be reviewed and amended accordingly.

7. References

7.1. Legislation

Fences Act 1972

Fire and Emergency Act 1996

Fire and Emergency Regulations 1996

Housing Act 1982

Residential Tenancies Act 1999

Residential Tenancies COVID-19 Modification Notice 2020 (Northern Territory Government Gazette No. S28, 28 April 2020)

Residential Tenancies COVID-19 Modification Notice Amendment 2020 (Northern Territory Government Gazette No. S29, 11 May 2020)

Residential Tenancies COVID-19 Modification Notice Amendment (no. 2) 2020 (Northern Territory Government Gazette No. S32, 4 June 2020)*Swimming Pool Safety Act 2004*

Work Health and Safety (National Uniform Legislation) Act 2011

Work Health and Safety (National Uniform Legislation) Regulations 2011

7.2. Policies

Asbestos Management Policy and Strategy for Northern Territory Government (Department of Infrastructure, Planning and Logistics)

Appeals policy

Complaints policy

Discretionary Decision Making policy

Domestic and Family Violence policy

Identification and Documentation policy

Tenancy Agreement Breach policy

Tenancy Agreements for Public Housing policy

Tenant Damage policy

7.3. Key related documents

Building Code of Australia

Code of Practice for the Safe Removal of Asbestos

Guidelines for Asbestos Management-Roles and Responsibilities for Government Agencies

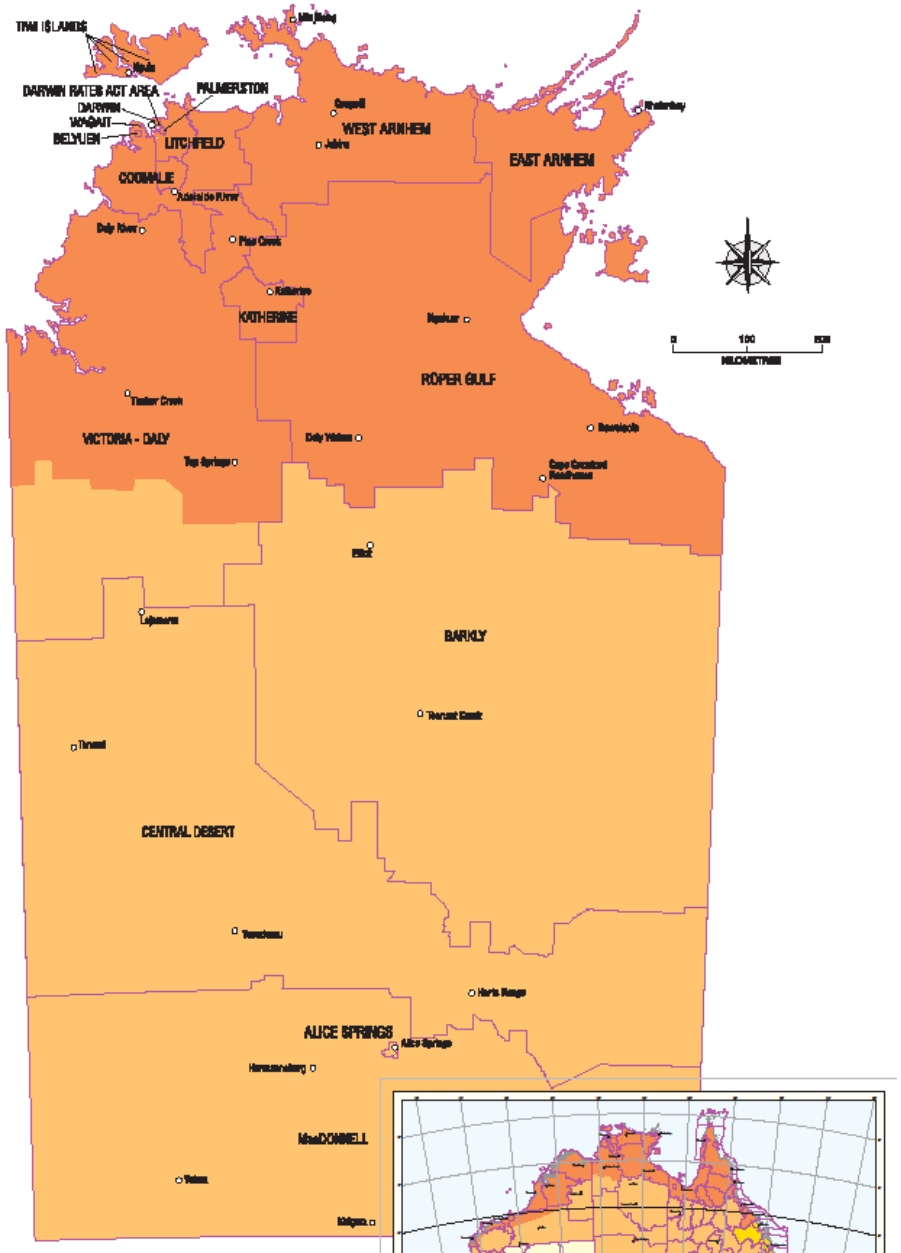
National Construction Code, 2016, 'Climate Zones for Thermal Design – Northern Territory '

8. Document change control table

Release date	Version number	Approved by (position)	Section amended	Category
3/09/2020	3.01	Executive Director Strategy, Policy and Performance	all	Editorial amendments
28/09/2018	3.00	Chief Executive Officer	3.7, 3.8	Revised
3/04/2017	2.00	Chief Executive	3.1	Revised
23/11/2016	1.01	Director Policy	all	Editorial amendments
4/07/2016	1.00	Chief Executive Officer	all	New

NORTHERN TERRITORY

APPENDIX A



Climate Zones

- Zone 1 - High humidity summer, warm winter
- Zone 2 - Warm humid summer, mild winter
- Zone 3 - Hot dry summer, warm winter
- Zone 4 - Hot dry summer, cool winter
- Zone 5 - Warm temperate
- Zone 6 - Mild temperate
- Zone 7 - Cool temperate
- Zone 8 - Alpine

Local Government Area boundary

Note: *Adapted from the National Construction Code of Australia and the Australian Government Bureau of Meteorology*

Appendix B

Repairs and Maintenance Obligations Policy Guideline

1. Purpose

A guideline for establishing whether public housing premises and ancillary property, owned or leased by the Chief Executive Officer (Housing) for the purpose of residential accommodation, are habitable, safe, clean and secure and in a reasonable state of repair, having regard to their age, character and prospective life.

2. Use of Guideline

The guideline is to be used as reference for determining whether the Chief Executive Officer (Housing), as the landlord for public housing premises and ancillary property, is meeting legislative obligations and responsibilities as defined in the *Residential Tenancies Act 1999* (RTA) and as determined further by relevant case law.

**This document applies to urban, remote, community living area and town camp public housing premises, government employee housing, affordable housing and social head leased housing, including occupied premises and vacant premises where a tenancy agreement may be offered to prospective tenants.*

3. Source

The guide has been developed with reference to:

- Part 7, Division 3, Section 63 (1) and (2) of the RTA which establishes parameters to be used by the Tribunal when considering emergency repairs.
- Part 7, Division 1, Sections 47, 48 and 49 (1) of the RTA which establishes a landlord's responsibilities in relation to repairs and maintenance, specifically;
- Part 7, Division 3, Section 57 of the RTA which establishes a landlord's obligation to repair;
- Recent rulings from the Northern Territory Civil and Administrative Tribunal that set a precedent and/or establish case law that expands on, or clarifies the intent of the section or clauses of the RTA.
- Reasons for the Order of the Commissioner of Tenancies Inquiry, Lareta Rosas v Chief Executive Officer (Housing), [2015] NTRT Cmr (14 July 2015) which clarified that the RTA is to be applied to premises tenanted under the *Housing Act 1982* unless specific provisions of the RTA are exempt.

4. Interaction between section 19 of the *Housing Act 1982* and section 51 of the *Residential Tenancies Act 1999* with regards to obligations for maintenance, cleanliness and damage (Rosas matter)

In the matter between *Rosas v Chief Executive Officer (Housing)* [2015] NTRT Cmr (14 July 2015) (Rosas matter), the Commissioner of Tenancies clarified that where inconsistencies between the *Housing Act 1982* and the RTA exist, the RTA is to be applied, unless the RTA identifies sections of the *Housing Act* 1982 that are exempt from the RTA.

The Commissioner's view was reached by observing:

- Section 34 of the *Housing Act* 1982 which provides for the RTA to be applied to and in relation to premises let under this Act; and
- Section 7(5) of the RTA which specifically lists sections of the *RTA* that do not apply to a tenancy or a proposed tenancy under the *Housing Act 1982*.

This view has important implications for the Department as it considered the interaction between:

- Section 19(1) of the *Housing Act 1982* and the requirement that a tenant keep the dwelling and its equipment in the condition that, in the opinion of the Chief Executive Officer (Housing), it was in when that person became the tenant of the dwelling or as improved from time to time by the Chief Executive Officer (Housing), fair wear and tear, and damage by, or arising out of, fire, storm and tempest, flood or earthquake excepted; and
- Section 51(1)(a) of the RTA which outlines a tenant's responsibilities to not maintain the premises and ancillary property in an unreasonable dirty condition, allowing for reasonable wear and tear.

In considering the interaction, the Commissioner determined that section 19(1) of the *Housing Act 1982* imposes higher maintenance and cleanliness obligations than section 51(1)(a) of the RTA and that higher obligation cannot be applied to a tenancy or a proposed tenancy under the *Housing Act 1982* as section 51(1)(a) of the RTA is not included as an exemption under section 7(5) of the RTA.

In practice, this means that more broadly section 51 of the RTA is the section which determines a tenant's responsibilities for a tenancy or proposed tenancy with the Chief Executive Officer (Housing) for purposes under the *Housing Act 1982*.

5. Emergency Repairs

The Chief Executive Officer (Housing), as the landlord for public housing premises and ancillary property, must respond to and carry out emergency repairs in accordance with the parameters established in the *Residential Tenancies Act 1999*.

Part 7, Division 3, Section 63 (1) and (2) of the *Residential Tenancies Act 1999* specifically establishes parameters used by the Northern Territory Civil and Administrative Tribunal when a ruling is sought from the Tribunal in relation to emergency repair matters raised by a tenant or landlord.

These parameters are to be applied, as a baseline, for responding to and carrying out emergency repairs. The baseline provides the Chief Executive Officer (Housing) with a level of assurance that:

- legislative obligations and responsibilities have been met; and

- public housing premises and ancillary property, that are the subject of a tenancy agreement, are habitable, safe, clean and secure and in a reasonable state of repair, having regard to their age, character and prospective life.

The following table includes information extracted from Part 7, Division 3, Section 63 (1) and (2) of the *Residential Tenancies Act* 1999.

EMERGENCY REPAIRS	
TIMELINES	• Emergency repairs to be carried out within 5 business days after receipt of a notification by the tenant. • If emergency repairs cannot be carried out within 5 business days, the landlord must have arranged for the works to be carried, and notified the tenant accordingly. This must occur within 5 business days after the tenant's notification. • Where the works have been arranged and the tenant notified as per above, the emergency repairs must be made within 14 days after the tenant's notification.
TYPE	• A water service that provides water to the premises that has burst; or • A blocked or broken lavatory system on the premises; or • A serious roof leak; or • A gas leak; or • A dangerous electrical fault; or • Flooding or serious flood damage; or • A failure or breakdown of the gas, electricity or water supply to the premises; or • A failure or breakdown of an essential service or appliance on premises for water or cooking; or • A fault or damage that makes premises unsafe or insecure; or • A fault or damage likely to injure a person, damage property or unduly inconvenience a resident of premises; or • A serious fault in a staircase or lift or other area of premises that unduly inconveniences a resident in gaining access to or using the premises.
LEGAL RISK AND CONSEQUENCE	Where the Chief Executive Officer (Housing) fails to comply with an obligation under the legislation and/or in a tenancy agreement, the Department is at risk of a compensation claim and/or a loss or damage claim for breach of the landlord's duty to repair. This risk is present where the tenant has provided notification of the repair, in accordance with the relevant requirements of the Act.

6. Habitable, Safe, Clean and Secure in a Legislative Context

The Chief Executive Officer (Housing), as landlord, **must** ensure that public housing premises and ancillary property are:

- not let unless habitable and safe;
- clean and suitable for habitation; and
- secure.

The parameters above are also a baseline and are specifically outlined in Part 7, Division 1, Sections 47, 48 and 49(1) of the *Residential Tenancies Act 1999*. These sections work collectively to establish a landlord's responsibilities and obligations for repairs and maintenance to premises and ancillary property.

HABITABLE AND SAFE - *Part 7, Division 1, Section 47*	
PREMISES NOT TO BE LET UNLESS HABITABLE AND SAFE	Section 47 of the legislation is specifically important as it provides baseline parameters for when the Chief Executive Officer (Housing), as the landlord for public housing premises, can: • enter into a tenancy agreement; or • offer to enter into a tenancy agreement. The legislation stipulates that landlords **cannot do either** unless the premises and ancillary property to which tenancy agreement relates is: • habitable; and • meet all health and safety requirements specified under an Act that apply to residential accommodation or ancillary property. In practice, this means that the Department **must not** enter into a tenancy agreement, or even offer to enter into a tenancy agreement without a level of assurance that the premises and ancillary property meet the above criteria. This is important, as it establishes this section as an obligation that **must** be met by landlords, including the Chief Executive Officer (Housing), as landlord for public housing premises.
LEGAL RISK AND CONSEQUENCE	Failure of a landlord to comply with Part 7, Division 1, Section 47 of the *Residential Tenancies Act 1999* can result in a maximum penalty of 100 units, equating to a maximum financial penalty of $15,700 for **each** breach under this section.

CLEAN AND SUITABLE FOR HABITATION - *Part 7, Division 1, Section 48*	
PREMISES TO BE CLEAN AND SUITABLE FOR HABITATION	Section 48(1) establishes that the premises and ancillary property to which a tenancy agreement relates must be: • habitable; • meet all health and safety requirements specified under an Act that apply to residential accommodation or ancillary property; and • are reasonably clean when the tenant enters into occupation of the premises. This is important as it establishes this section as an obligation that **must** be met by landlords, including the Chief Executive Officer (Housing), as landlord for public housing premises. If not complied with, it is considered a breach of section 48(1).
LEGAL RISK AND CONSEQUENCE	Where a landlord fails to comply with an obligation under the legislation and/or in a tenancy agreement, there is risk of a compensation claim and/or a loss or damage claim against a landlord for breach of the landlord's duty to repair. It is important to note that it is not a breach of section 48(1) if the landlord's failure to comply is caused by an act or omission of the tenant, or a failure of a tenant to notify the landlord of the repairs.

PREMISES TO BE SECURE - *Part 7, Division 1, Section 49 (1)*	
PREMISES TO BE SECURE	Section 49(1) establishes that it is a term of tenancy agreement that the landlord will take reasonable steps to: • provide locks and security devices that are necessary to ensure that the premises and ancillary property are reasonably secure; and • maintain locks and security devices that are necessary to ensure that the premises and ancillary property are reasonably secure. This is important as it establishes section 49(1) as an obligation that **must** be met by landlords, including the Chief Executive Officer (Housing), as landlord for public housing premises.
LEGAL RISK AND CONSEQUENCE	Where a landlord fails to comply with an obligation under the legislation and/or in a tenancy agreement, there is at risk of a compensation claim and/or a loss or damage claim against a landlord for breach of the landlord's duty to repair. This risk is present where the tenant has provided notification of the repair, in accordance with the relevant requirements of the Act.

7. Habitable, Safe, Clean and Secure in an Operational Context

The challenge with Part 7, Division 1, Sections 47, 48 and 49(1) and with the Northern Territory's *Residential Tenancies Act 1999* and the *Residential Tenancies Regulations 2000*, is they:

- **do not** provide definitions of habitable, safe, clean and secure; or
- **do not** provide minimum standards that assist in setting the baseline parameters for habitable, safe, clean and secure.

In the absence of specific definitions, minimum standards and/or regulation guidance, the Department must rely on the:

- intent of the legislation during drafting, first and second reading speeches and passing through the Legislative Assembly;
- historical and recent rulings from the Northern Territory Civil and Administrative Tribunal, which set a precedent and/or establish case law that expands on, or clarifies the intent Part 7, Division 1, Sections 47, 48 and 49(1) of the *Residential Tenancies Act 1999;*
- legislation and/or case law in other states or Territories that may provide definition or guidance on similar subject matter; or
- the common meaning of the terms.

To assist with interpreting Part 7, Division 1, Sections 47, 48 and 49(1) of the Northern Territory's *Residential Tenancies Act 1999*, broad baseline parameters for habitable, safe, clean and secure have been developed by Department to support operational application of the legislation.

HABITABLE, SAFE, CLEAN AND SECURE	
HABITABLE	• Meet all health and safety requirements specified under an Act that applies to residential premises or ancillary property. • Provides electricity, running water, adequate space for living, facilities for food storage and cooking, sanitation and washing facilities; • Provides adequate facilities for tenants living with disability or with other specific vulnerabilities, which may require specific facilities or modifications within the premises.
SAFE	• Meet all health and safety requirements specified under an Act that applies to residential premises or ancillary property. • Provides, protections from the cold or heat, damp, rain and wind and vermin/pests. • Is structurally sound, free from hazardous materials that pose a serious risk of harm to the health or safety of occupants and does not present a fire hazard

CLEAN	• The premises must be reasonably clean when the tenant **enters** into occupation of the premises. • The term 'reasonably clean' is established by considering what a 'reasonable person' would consider 'clean' for the premises. • The 'reasonable person' test may also need to consider whether the Chief Executive Officer (Housing), as a model social housing landlord, would be held to a higher account of cleanliness for public housing premises. • Generally a premises is considered to be clean where it provides a basic level of cleanliness and hygiene.
SECURE	• Is secured by locks and other security devices that ensure that the premises and ancillary property are reasonably secure. • Maintain the locks and other security devices to ensure the premises and ancillary property are reasonably secure.

8. Vulnerability of Tenants and the Intersect with Habitable, Safe, Clean and Secure

8.1. The Test of Habitability

Recent rulings from the Northern Territory Civil and Administrative Tribunal (NTCAT) have set a precedence and subsequently established case law that expands on, or clarifies the intent of, and interpretation of Part 7, Division 1, Sections 47, 48 and 49(1) of the Northern Territory's *Residential Tenancies Act 1999*.

One of the most significant findings from NTCAT in the matter of the *Various Applicants from Santa Teresa v Chief Executive Officer (Housing) 2019* was the test applied to habitability of a premises.

NTCAT held that the test for whether a property is habitable is 'whether the premises and ancillary property were such that there is a **threat to the tenant's safety, going both to structure and health issues.'** NTCAT held that the obligation is on the tenant to show that the state of the premises and ancillary property were such that a threat to tenant's safety will naturally occur from the ordinary use of the premises. NTCAT concluded that the threshold test that a tenant must meet is high.

In the Santa Teresa matter, three claims met this high threshold:

1. A leaking/flooding shower **combined** with a blocked toilet posed a **threat to the health of a tenant** rendering the premises uninhabitable. The NTCAT ruling noted that a leaking/flooding shower alone (in the matter presented before the Tribunal) was not enough to meet the high threshold.
2. A premises without an air conditioner **coupled with** an inability to open and close the front door rendered the premises uninhabitable. The ruling by NTCAT took into consideration temperatures in Santa Teresa and that the tenant was an elderly woman who did not live at the property at all when it was hot, due to the lack of air conditioner.

   NTCAT did stipulate that a ruling on this claim **should not be taken** to suggest that all houses leased by the Chief Executive Officer (Housing) in desert communities should have an air-conditioner. Whether the absence of an air conditioner renders a premises uninhabitable will depend on many

factors, including architectural design of the premises, the presence of functioning ceiling fans and evidence presented by an applicant, including **medical evidence pertaining to the health of a tenant**.

3. A premises that had been leased without a smoke alarm installed where NTCAT identified this as a breach of the *Northern Territory Fire and Emergency Act* and associated Regulations. The absence of a smoke alarm was subsequently ruled by NTCAT as a 'clear breach' of a landlord's responsibility to ensure all health and safety requirements specified under an Act that apply to residential premises or ancillary property [s48 (1)(b)].

In the first two cases, the Chief Executive Officer (Housing) was ordered to refund rent paid by each applicant for the period of time the premises were deemed uninhabitable. For all three cases, the Chief Executive Officer (Housing) was also ordered to pay compensation for failure to comply with an obligation under the legislation.

8.2. Tenant Safety, Health, Vulnerability and Habitability

The first two cases above and NTCAT's ruling, highlight that the test for habitability not only includes looking at the asset and the threat to tenant safety, but also extends to the threat to tenant health.

In light of the ruling, the Chief Executive Officer (Housing) must consider habitability of public housing premises in the context of a threat to tenant's safety, going both to structure and health issues. The ruling, indirectly places a level of onus on the department to consider, more broadly, tenant safety in an expanded context of tenant (and household) vulnerability and the intersection with threat to tenant health.

In practice, this can be best achieved by taking a situational approach and operating on the principle that 'different situations will demand a different type of approach' when making determinations on whether premises are habitable, safe clean and secure. Such an approach must:

- Apply a vulnerability lens to better understand the threat to tenant and household health prior to entering into a tenancy and throughout the duration of a tenancy;
- Acknowledge that each household is unique and will present with varied vulnerabilities and risk factors, including;
  - aged 55 years and over (seniors);
  - aged 16-24 (youth);
  - those at risk of, or experiencing domestic and family violence;
  - those with a physical, sensory, psychiatric, neurological, cognitive and/or intellectual disability; and
  - Aboriginal and Torres Strait Islander people aged 50 years and over with chronic medical conditions;
- Consider broader environmental factors like location, weather, dust, vermin and insects and the role such factors may play in a threat to tenant and household safety, going both to structure and health issues.

The situational approach aligns with the Department's commitment to positioning the agency as a model social landlord approach whilst also acknowledging that safe and secure housing directly contributes to improving health and wellbeing outcomes for people.