

WPS LAW

**Tips for risk management
for First Nations corporations**



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This document is intended as a guide only. This does not constitute legal advice. There may be additional and important considerations that should be taken into account in your specific circumstances. If you or your organisation has a legal issue, you should obtain professional advice from a legal practitioner.

Why talk about risks?

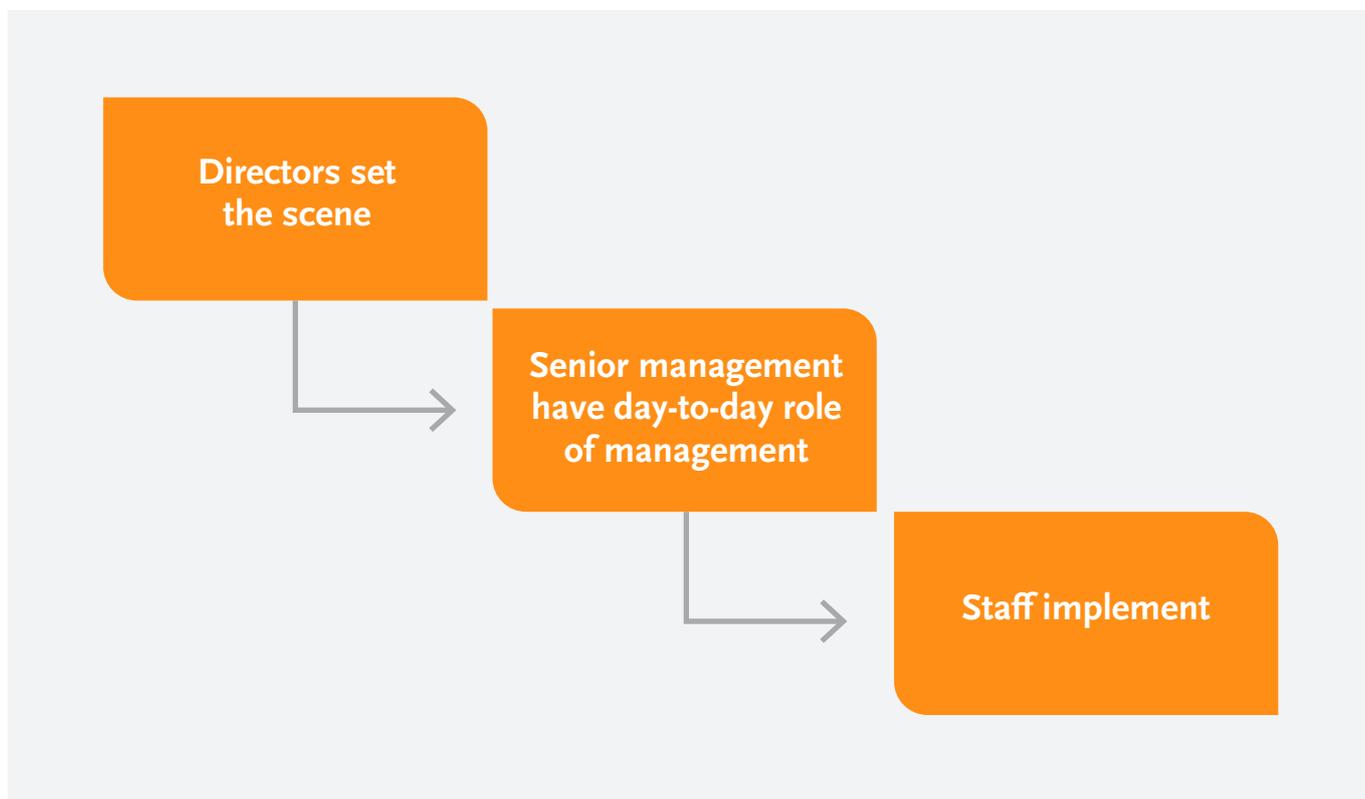
- Each corporation is unique.
- How each corporation manage risks and opportunities is a matter for each corporation.
- Future is uncertain.
- Managing risks maximises opportunities and increases self-determination while reducing the likelihood and consequence of threats.



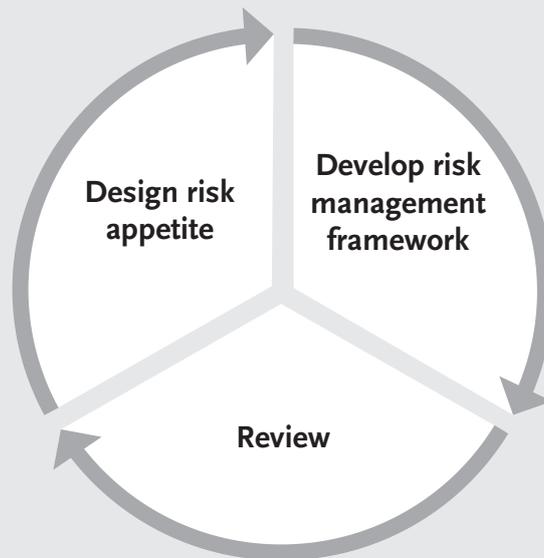
- Risk management is not new. See ISO 31000:2018 (international guidelines on risk management for organisations) and IEC 31010 (international risk assessment techniques, features a range of techniques to identify and understand risk).
- More can be done to explore how risk management can be used in First Nations corporations.

What is the role of directors in managing risks?

- Directors set the scene and management implements.



- Directors will need to weigh up objectives that are sometimes competing.
- Some boards may be aided by a facilitator.
- Effective oversight of risk requires independent judgment.
- Aboriginal and Torres Strait Islander people can exercise independent judgment.
- Independent assistance does not mean that the board does not have the skills required already.
- Independence is a valuable trait that may help boards to effectively separate big picture issues from day-to-day challenges.
- Independence counters any views (internal or external) of unfairness (or bias).
- Directors design a risk appetite, develop a risk management framework, and continually review.



Checklist for financial benefits

- A risk appetite explains much risk is the corporation willing to take to achieve its objectives. Think PEEC:
 - ◇ Purpose: What is our purpose?
 - ◇ Expectations: What are our expectations?
 - ◇ Environment: What is our environment?
 - ◇ Capacity: What is our capacity?
- A board can summarise the risk appetite in a simple risk appetite statement. A more detailed table can be developed for each risk issue or strategic objective. A sample simple risk appetite table is in Attachment A.
- A risk management framework is a tool for directors to oversee risk. Think AIME:
 - ◇ Appetite: How is our risk appetite reflected in corporate culture
 - ◇ Identify risks: How does our framework identify risks, determine significance and design controls?
 - ◇ Management: How are the procedures to manage risks being implemented?
 - ◇ Evaluate: How are we continually evaluating key management (like the Chief Executive Officer) in their implementation of the framework?
- A sample simple risk management framework is in Attachment B.

- A simple risk management framework is in Attachment B.
- Directors can use 'PEEC AIME' to manage risks.
- Directors can consider a risk sub-committee.

Five common risks and practical tips

Issue	Questions for board	Practical Tip
Internal stability	<ol style="list-style-type: none"> 1. What is our relationship with our members, stakeholders and broader community? 2. How does that impact the well-being of our organisation? 3. How are complaints handled? 	<ul style="list-style-type: none"> • Get creative with community engagement • Conduct anonymous feedback surveys • Do not shy away from feedback • Use results properly • Transparent processes for disputes and info requests
Financial sustainability	<ol style="list-style-type: none"> 1. How do we pay for operations? 2. Are we (and associated entities, like trusts) transparent and accountable? 3. What does the future look like, and what if that was to change? 4. Are there other ways that we can fund our operations? 	<ul style="list-style-type: none"> • Work with your accountant (or engage one) • Develop agreed processes and policies with associated entities • Develop basic operational budget • Identify partnering opportunities
Compliance landscape	<ol style="list-style-type: none"> 1. What are the key laws that apply to us? 2. What could happen if they aren't (or are) followed? E.g. damage to country? 3. How do we ensure regulatory compliance? 4. How do we move beyond compliance? 	<ul style="list-style-type: none"> • Work with your accountant (or engage one) • Develop agreed processes and policies with associated entities • Develop basic operational budget • Identify partnering opportunities
Board composition	<ol style="list-style-type: none"> 1. Do we have diversity of thinking on our boards? 2. Do we have succession plans and training programs? 3. Are our roles understood, particularly the role of chairperson? 4. What do members think about our performance? 	<ul style="list-style-type: none"> • Participate in annual board performance reviews • Report and act on findings • Build reputation of corporation • Skills based appointments • Consider independent directors
Strategic direction	<ol style="list-style-type: none"> 1. Why do we operate? 2. Where are we going? 3. When do we want to get there? 4. How will we get there? 	<ul style="list-style-type: none"> • Have strategic issues as a standing agenda item in board meetings • Schedule (and commit to) annual board strategic planning events, away from your usual office • Consider an independent facilitator for planning days



Attachment A: Sample simple risk management framework:

Key Risk	Description Think AIME: <ul style="list-style-type: none"> • Appetite: • Identify risks • Management • Evaluate 	Probability: What is the chance of this happening? - Highly likely - Likely - Possible	Severity: How big are the consequences if it does? - Major - Moderate - Minor	Actions to minimise risks
Internal				
Example: Conflicts between members and directors	Example: Members may have disputes with directors, which may impact community well-being and our reputation. This will reduce the likelihood of effective decision making and increase the costs of administration by increasing member requisitions	Example: Likely	Example: Moderate	Example: <ul style="list-style-type: none"> • Get creative with community engagement • Conduct anonymous feedback surveys • Do not shy away from feedback • Use results properly • Transparent processes for disputes and info requests
External				
Example: Conflicts between members and directors	Example: Laws continually evolve. The relevant corporations legislation may change, causing us to make changes to the way we are governed. This is usually done on notice but we have no control over changes to the law.	Example: Likely	Example: Moderate	Example: <ul style="list-style-type: none"> • Ask lawyer to present to board • Ask risk sub-committee for reports in consultation with lawyer • Stay up-to-date with changes • Explore ways to influence political/legal changes