



# **The Future of Native Title Anthropology**

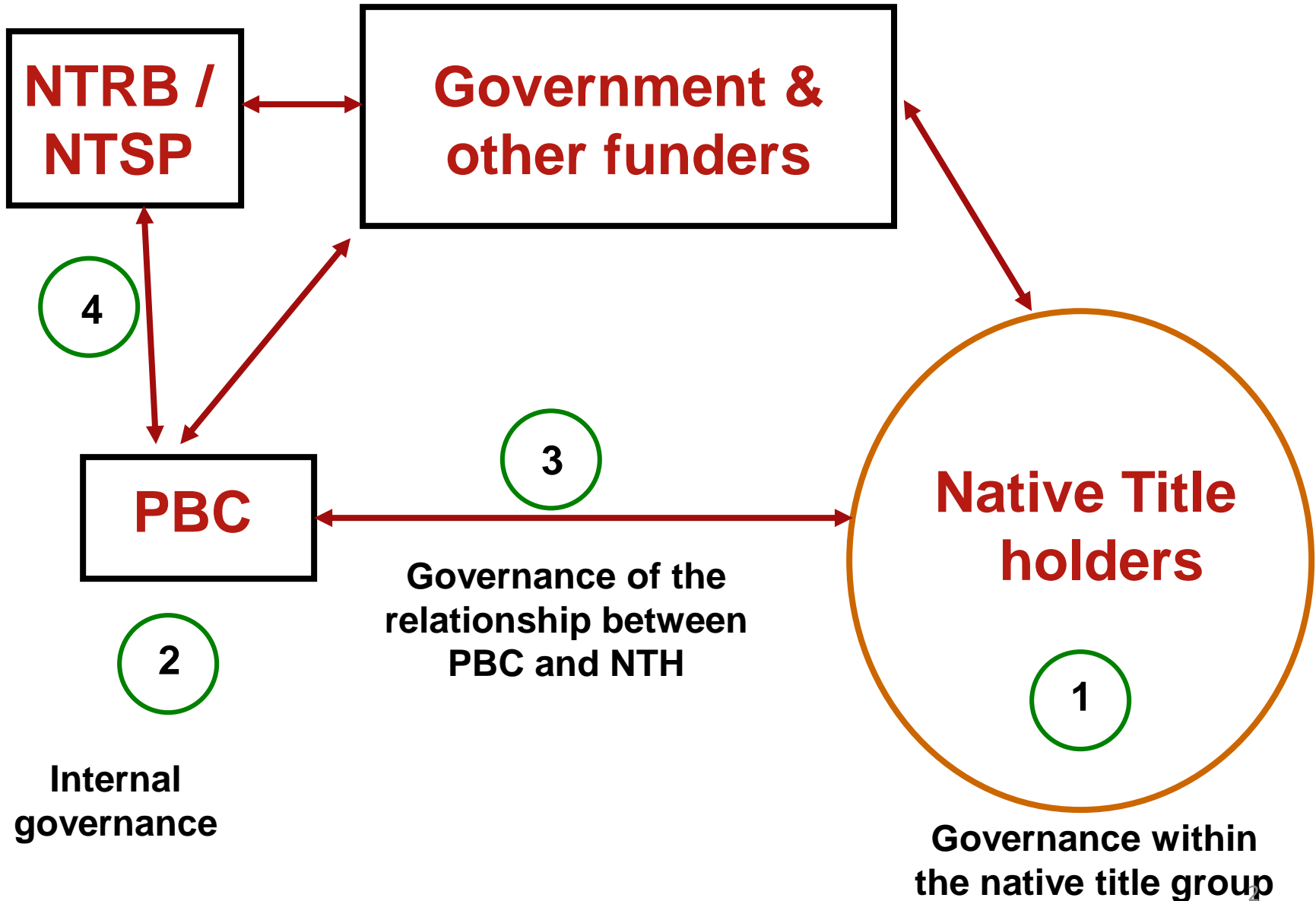
**Centre for Native Title Anthropology, ANU  
&  
Queensland South Native Title Services**

## **Day 2, Session 3**

**Governance of native title corporations:  
What does anthropology have to say?**

**David Martin  
Anthropos Consulting**

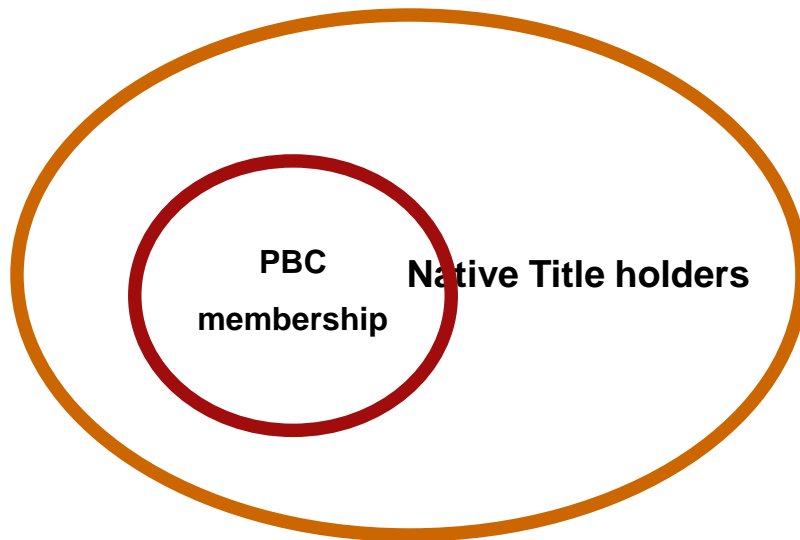
# PBC governance 'arenas'



# Why different governance arenas?

- Governance is about people, relationships, and processes, the way people do things, the systems they are located in, interactions with government, and the way power is distributed and used.
- A governance arena involves a particular set of relationships, rules, and processes - where people do things in particular ways – eg football arena and different codes
- Decision-making is one part of governance: **Need to adopt decision-making processes appropriate for each arena.**
- Each ‘arena’ involves different forms of governance; for example
  - different matters about which decisions have to be made;
  - Differentials in knowledge about these matters;
  - different processes of making decisions;
  - different people who should make the decisions;
  - different people whose interests might be affected by a decision;
  - Differentials of power and authority.

# PBC members and the native title holding group: IMPORTANT DIFFERENCES



- PBC members are native title holders who have applied for membership and been accepted by the PBC
  - PBC membership is a **LIST** of legally defined set of individuals
  - The list will never be complete, or accurate – people die and are born
  - PBC membership is a subset of the native title holding group
  - The CATSI Act and PBC Regs allow non-native title holders to be members (if Reg 8 followed)
- Membership of the native title group is:
    - ☐ **recognised in a native title determination**
    - ☐ **defined by traditional law and custom**

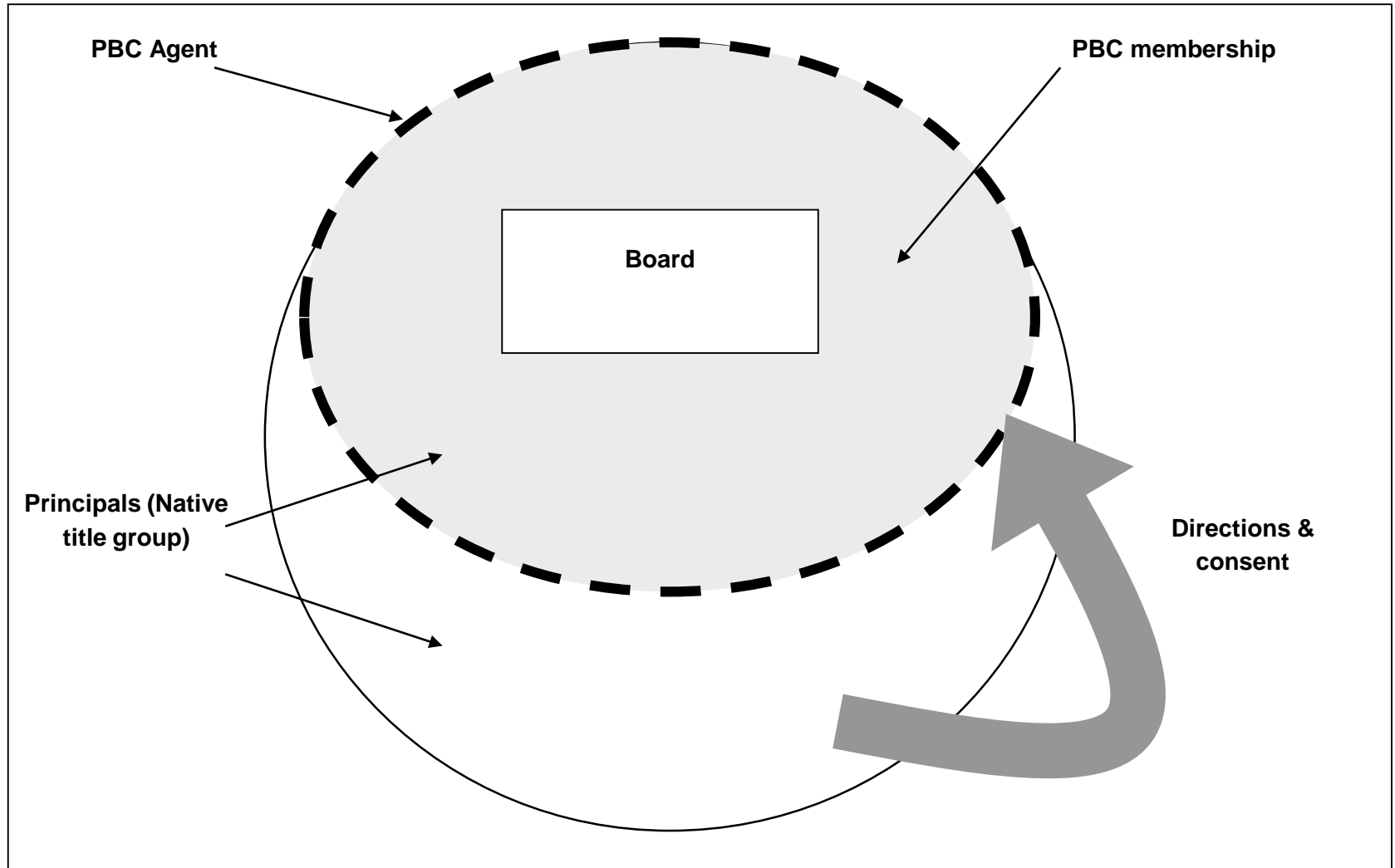
For Reg 8, all the native title group members must be consulted and give their consent, **NOT JUST THOSE WHO ARE PBC MEMBERS**

- ☐ PBC members cannot automatically make native title decisions at AGMs: they are not all of the native title holders.

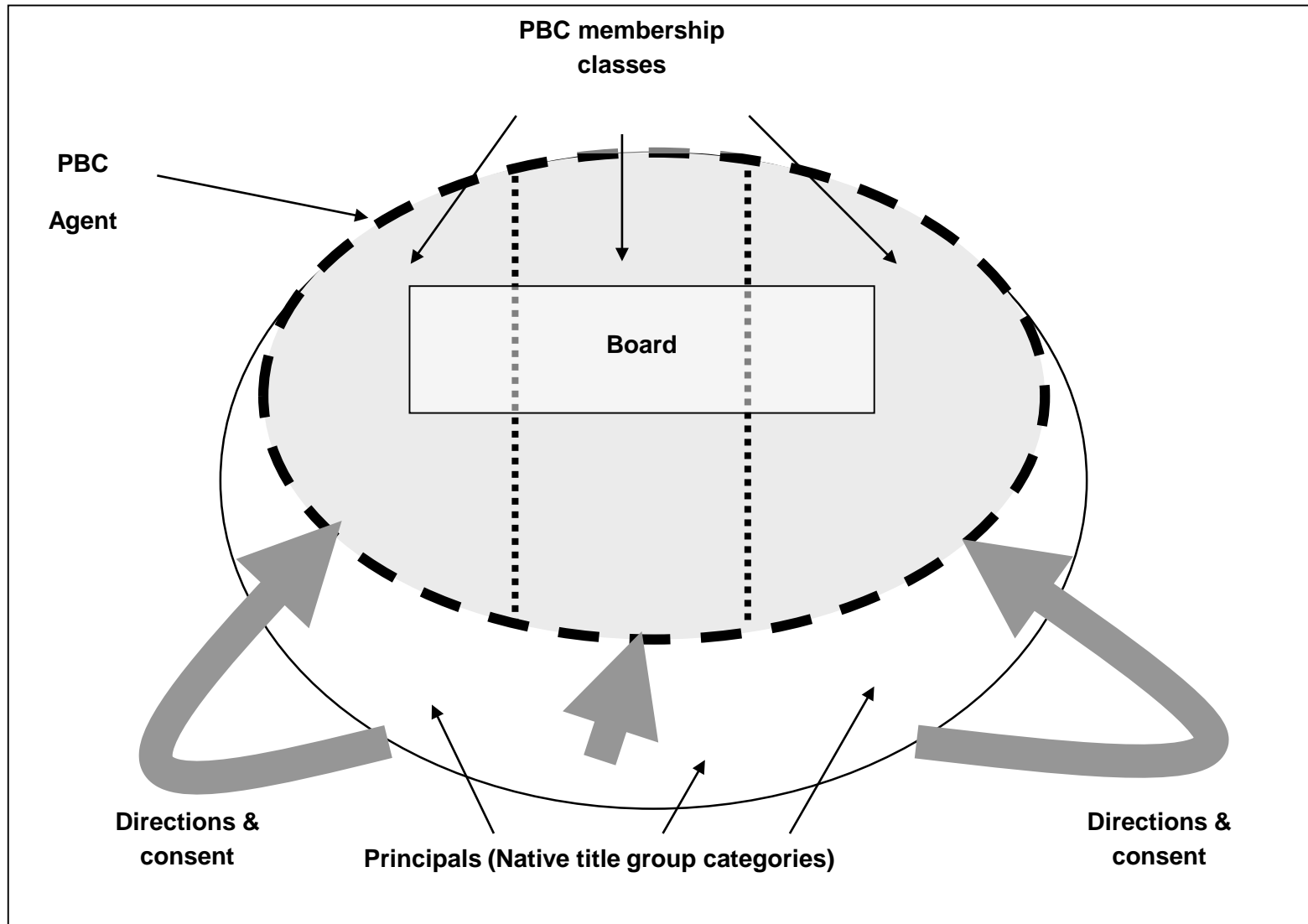
# The four basic PBC prototypes

<div>Legal relationship between Native title group and PBC</div> <div>Character of membership</div>	Agent PBC	Trustee PBC
Participatory membership	<b>Type 1:</b> Agent PBC with participatory membership	<b>Type 3:</b> Trustee PBC with participatory membership
Representative membership	<b>Type 2:</b> Agent PBC with representative membership	<b>Type 4:</b> Trustee PBC with representative membership

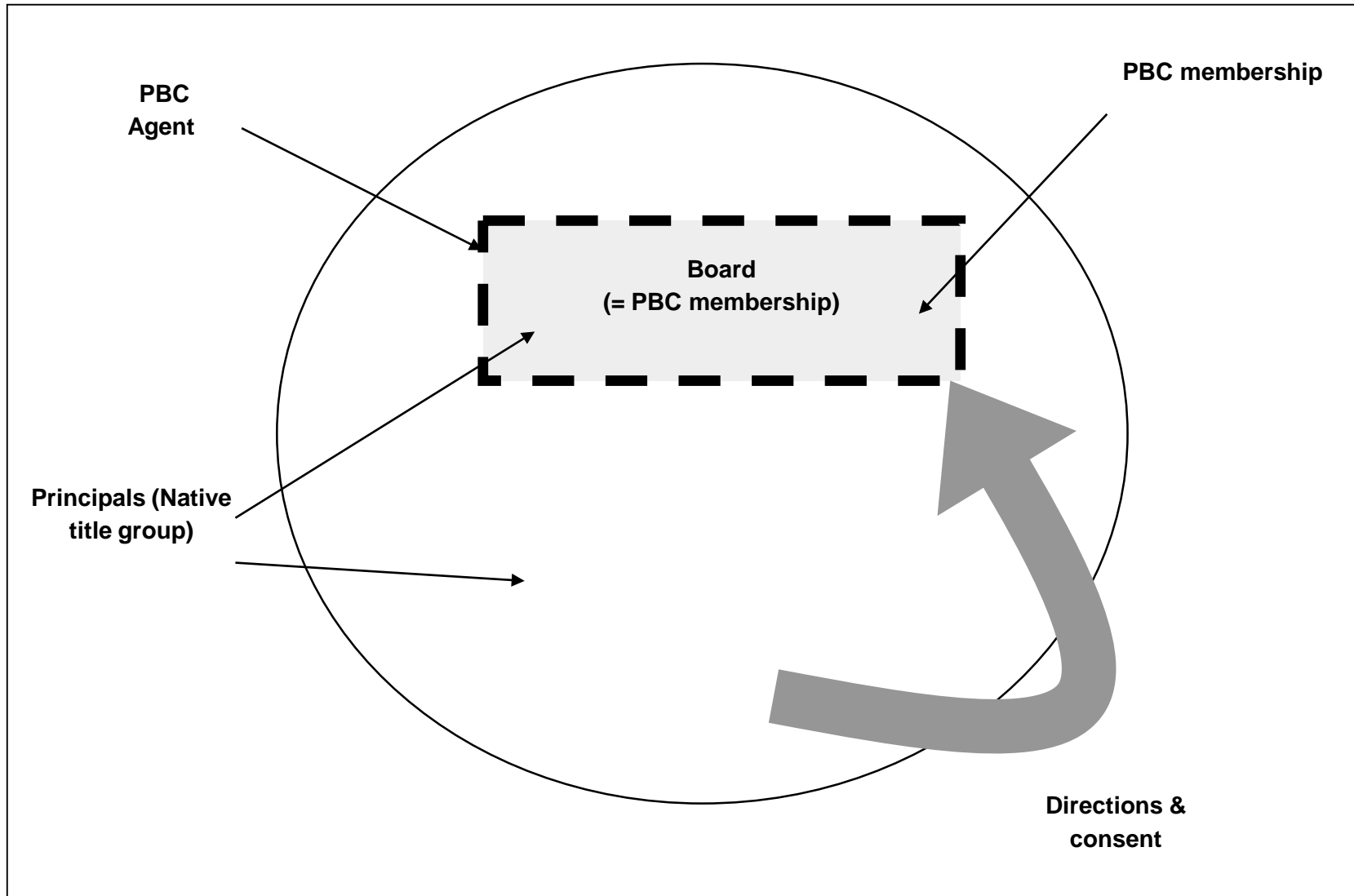
# Agent PBC with “participatory” membership (Type 1)



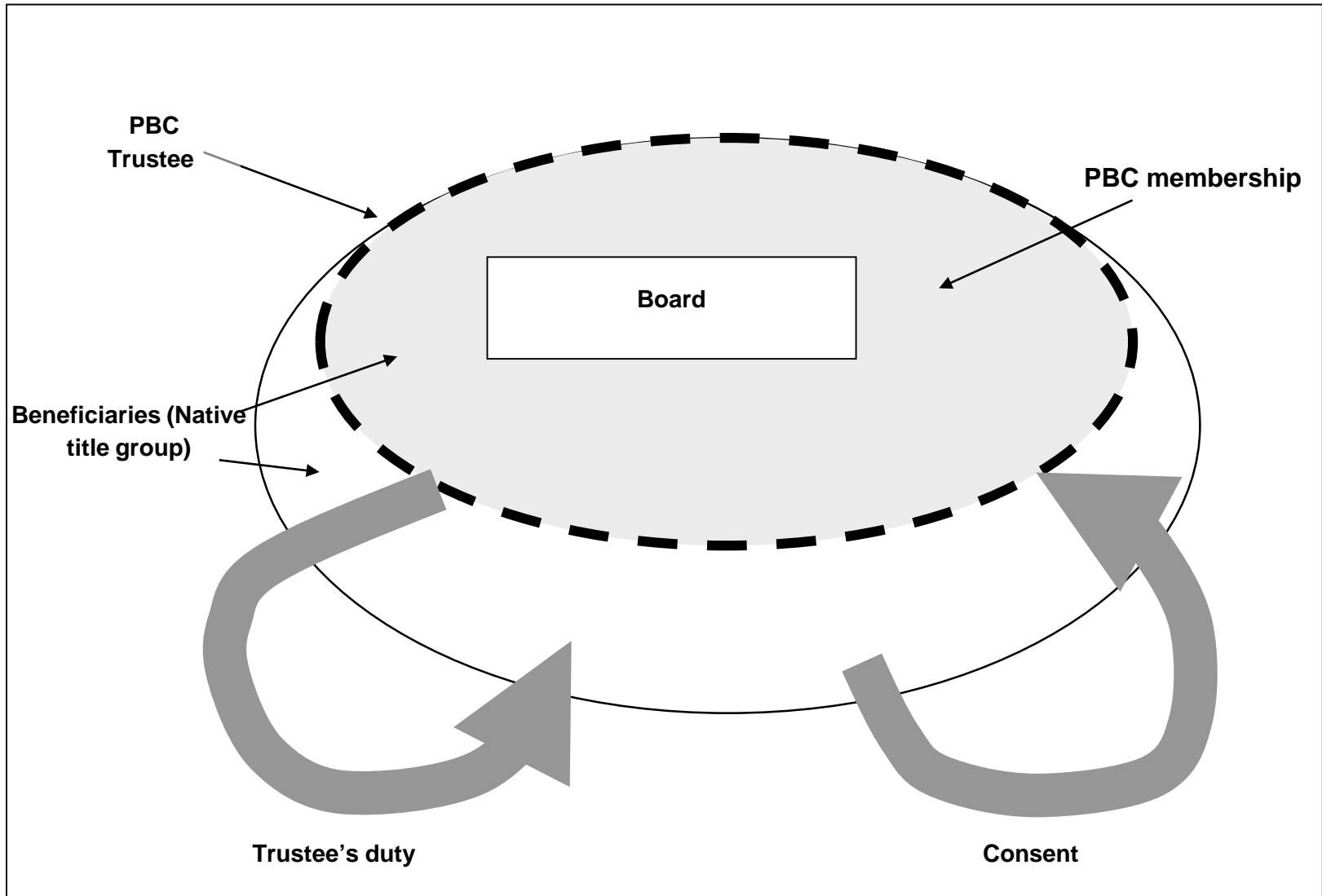
**Figure 2: Agent PBC with “participatory” membership:  
membership classes (Type 1)**



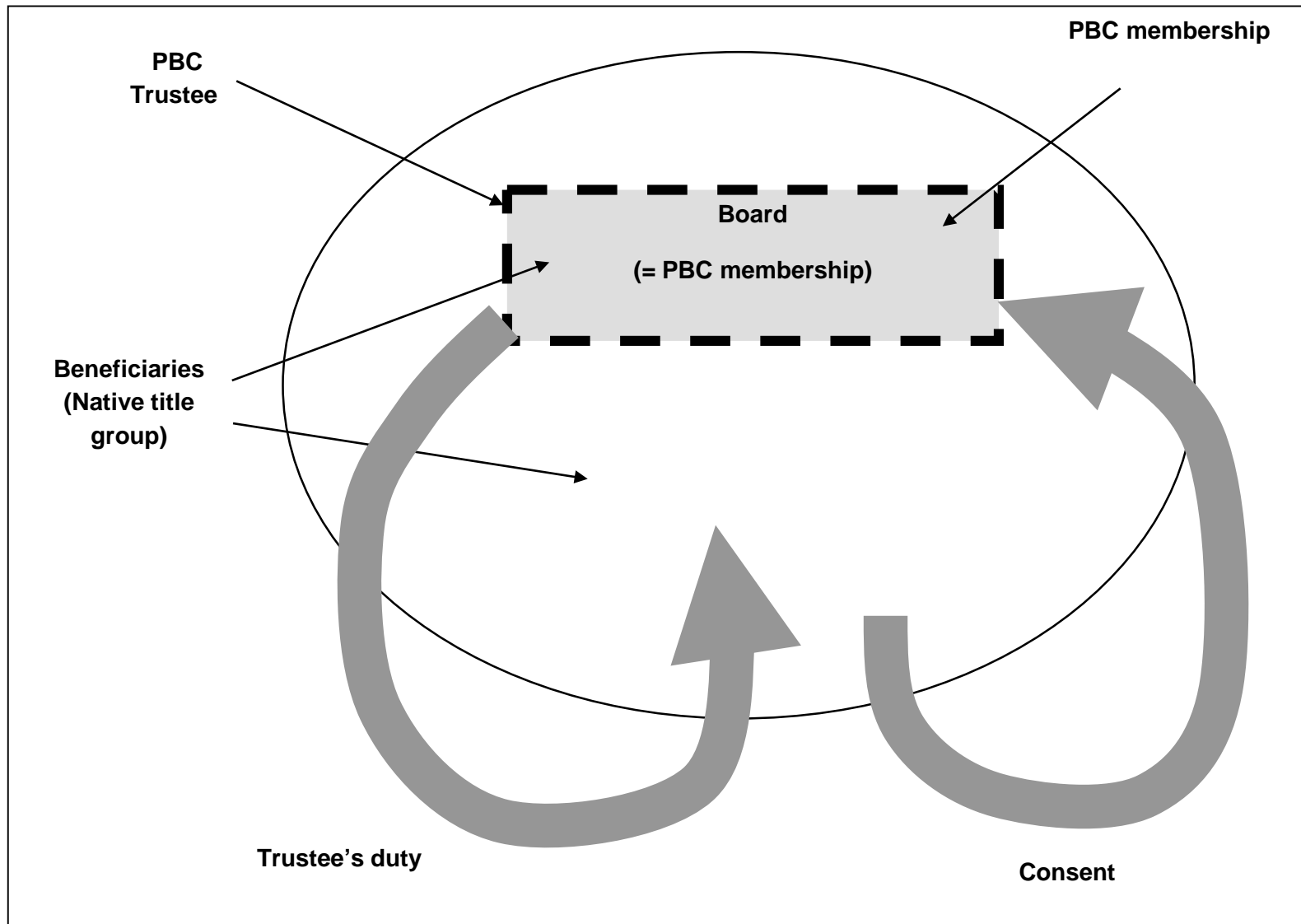
**Figure 3: Agent PBC with “representative” membership  
(Type 2)**



**Figure 4: Trustee PBC with “participatory” membership  
(Type 3)**



**Figure 5: Trustee PBC with “representative” membership (Type 4)**



# Arena 3, Native Title Decisions

Government and NNTT and NTRBs

Other paperwork

Reg 9 paperwork

**Directors**  
**PBC**

'Trustee or agent relns

'Fiduciary duty

PBC Regs 8, 8A, 9

PBC's Rules

Free, prior and informed consent

Consensus building, community  
engagement, relationship building

**Family**  
**1**

**Family**  
**2**

etc

**Family**  
**3**

**Family**  
**4**

# Codifying 'law and custom'

**Problems can arise from 'codification' of law and custom, and of informal social practice; e.g.**

- Codification can only ever partially reflect the complexities of social process or social categories
  - e.g. using a corporation's membership classes to reflect social categories, such as 'families' or 'language groups'.
  - e.g. cannot reflect 'epistemic openness' (Merlan)
- It may concretise social processes in which complex and multidimensional interpersonal relationships are paramount (e.g. those within a kinship system)
- It may compromise the flexibility and negotiability inherent in many cultures (including Aboriginal ones)

**However, codification may be necessary:**

- e.g. when what constitutes 'law and custom' or 'tradition', and who has the authority to 'declare' it, is itself disputed.