

Challenges for sustainable governance in the development and implementation of comprehensive mining agreements

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This seminar ...

- Makes four key arguments:
 - Inadequate attention is paid to the governance of agreements as *systems*;
 - Agreement governance should be seen as 'intercultural';
 - Agreement governance has to be explicitly understood and implemented as *transformative*;
 - Sustainable agreement governance needs to incorporate support for *diversity* amongst Aboriginal stakeholders.

1. Governance as an implementation issue

- Major agreements typically involve highly complex arrangements between parties;
- Negotiations and arrangements are driven by legal culture which may not account for intercultural and governance issues;
- Agreements focus on meeting / reconciling the various parties' perceived aspirations and interests within a risk management framework;
- Implementation needs and issues are often given little attention in agreements.

Governance as an implementation issue (contd)

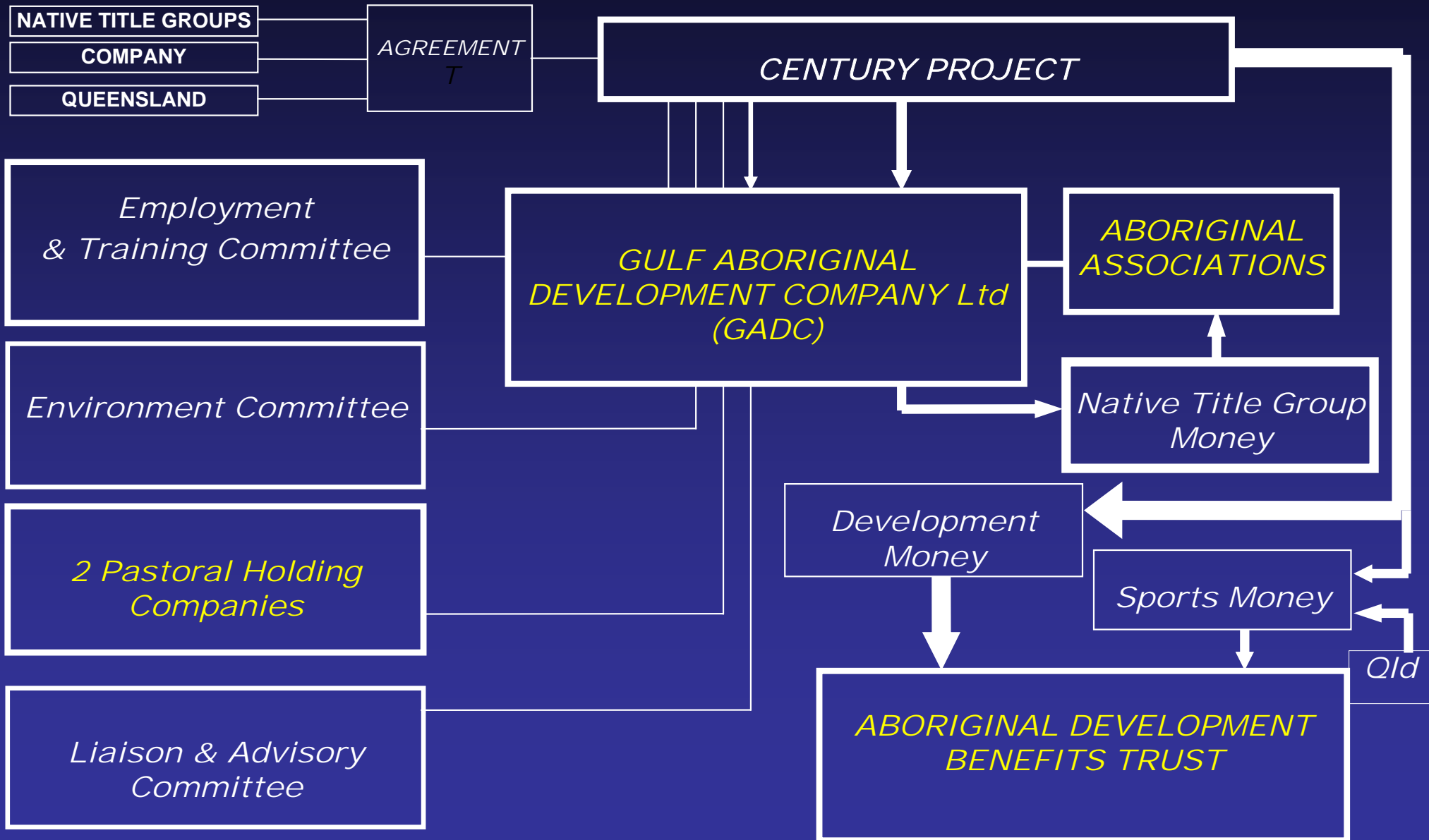
- Typically, agreement structures reflect and are mapped onto key issues identified in negotiations: e.g.
 - 'certainty' and viability for the resource developer;
 - Aboriginal rights and interests in country;
 - support of 'culture', cultural heritage protection;
 - environmental management;
 - financial benefits;
 - employment and training;
 - business development.

Case study: Century (GCA) Agreement



Mt Isa

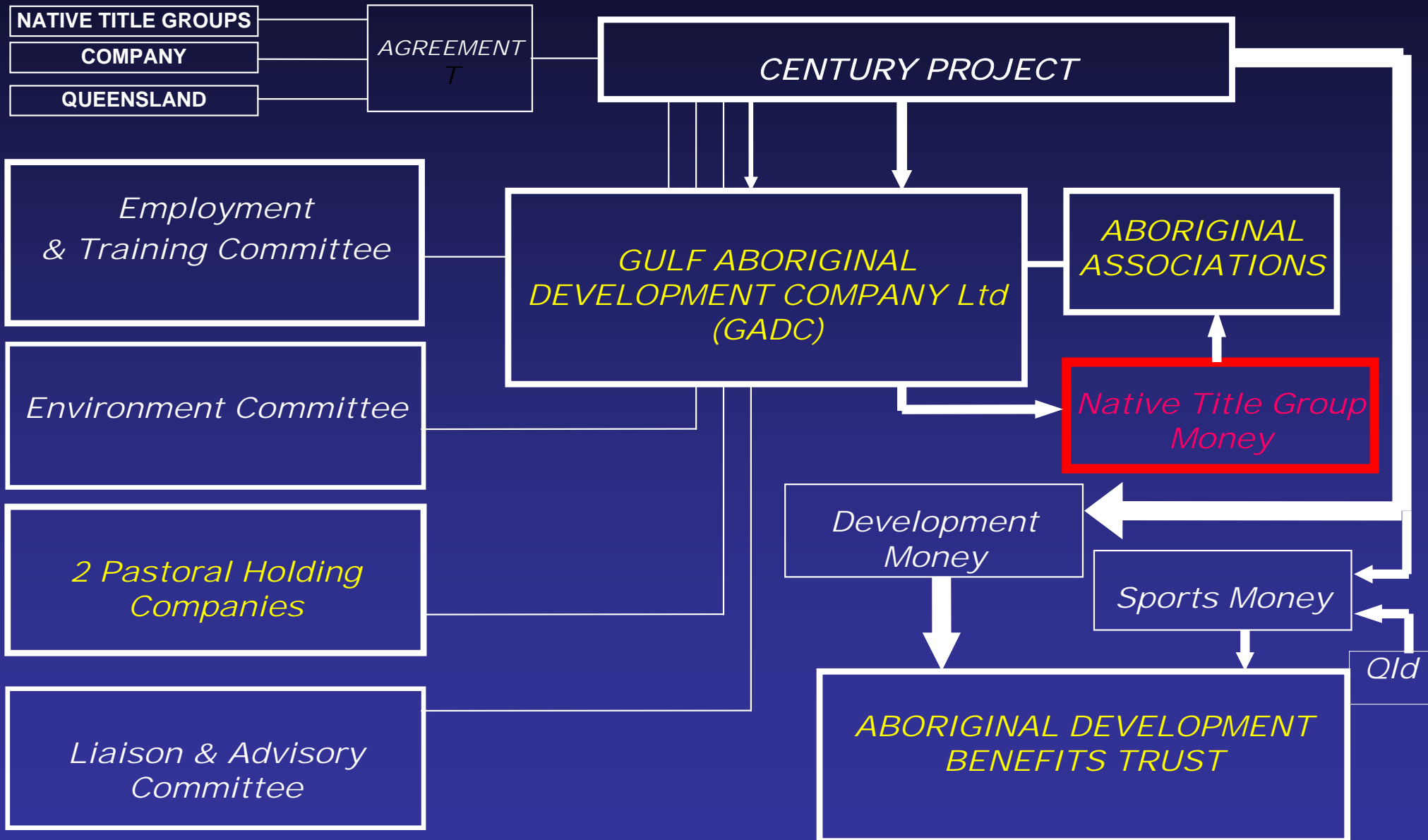
EXAMPLE: CENTURY AGREEMENT (GCA) STRUCTURES



Governance as an implementation issue (contd)

- The consequence can be that the governance of a large agreement as a system can be:
 - Unwieldy, cumbersome, and incapable of responding to changing circumstances;
 - resource intensive (human and capital) for all parties;
 - in particular, place considerable strain on Indigenous people, communities and their organisations;
 - be prone to failure at crucial points in the system and thus pose major risks to the interests of all parties.

NEAR FAILURE OF THE CENTURY AGREEMENT



2. Governance as intercultural

- 'Intercultural' – challenges the idea of separate, distinct, cultures (e.g. Indigenous, mainstream, mining etc);
- means that the particular arena or phenomenon draws from and in turn impacts on a number of 'cultures';
- Applies not only to Aboriginal structures and practices (e.g. royalty associations, work practices etc);
- Also applies to e.g. mining companies' 'community relations' divisions, mine site culture etc;
- In particular, the implications of governance being intercultural need to be incorporated into both design and implementation stages of agreements.

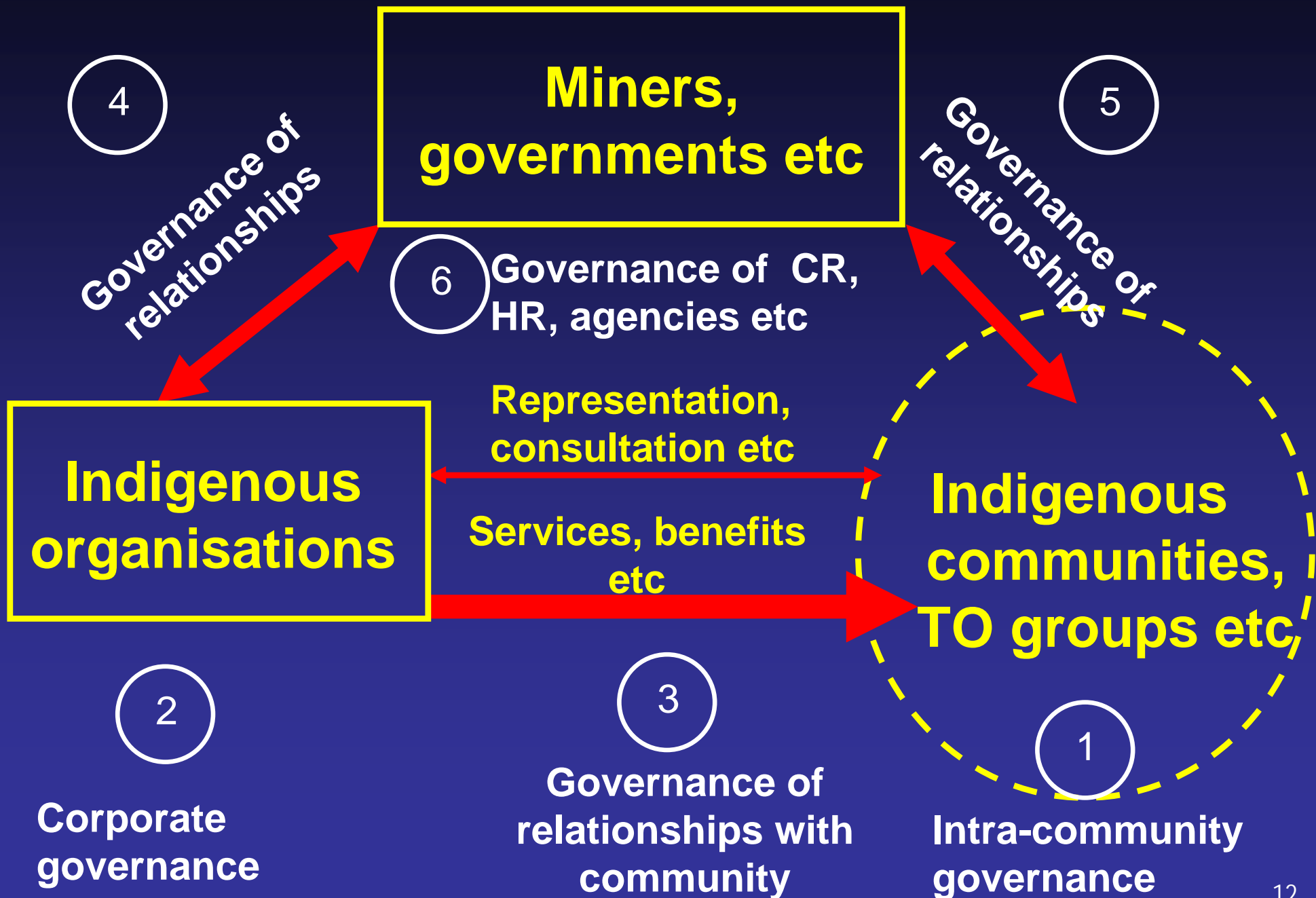
Governance as intercultural (contd)

- How the intercultural nature of agreement governance is taken into account in design and implementation will depend upon the particular matter being considered.
- While entities such as an Indigenous representative and advocacy body, the company's community relations division, and its mine site employment division must all incorporate a recognition of intercultural factors, different issues will arise for each.
- For example, it may be necessary to build in possibilities for different forms of Indigenous leadership to emerge across different arenas in the agreement.

Governance as intercultural (contd)

- A number of key governance arenas can be identified in mining agreements; each will have differing intercultural characteristics with important implications for their design and for agreement implementation ...

Key governance arenas



Governance as intercultural (contd)

- Factors such as the following are relevant to defining the intercultural character of each arena for both design and implementation purposes.
 - Who/where is/are the source/s of authority as to the relevant principles of governance; e.g. to resolve disputes, to 'declare' what the rules are?
 - Does the institution involved have a formal, legal presence or is it a collectivity of some kind?
 - Is the governance that of a relationship between an entity and a collectivity, of relationships within a collectivity, or of an entity?
 - Does the particular governance arena entail multiplex linkages or is it relatively mono-dimensional?

3. Socio-cultural transformation

- Many major agreements based on native title claims;
 - native title obliges claimants to construct an account of their present in terms of essentially unbroken connections to a traditional past – as arising through adaptation to the wider society, not transformation by it (“traditionalism”);
 - but agreements offer possibilities for them to construct their futures through explicitly transformative processes involving engagement with the institutions of the dominant society (“modernism”);
 - Paradoxically therefore, while native title (or its assertion) can provide leverage for agreements, its legal fragility and constraints of themselves provide a poor substrate for agreements in terms of their long-term sustainability.

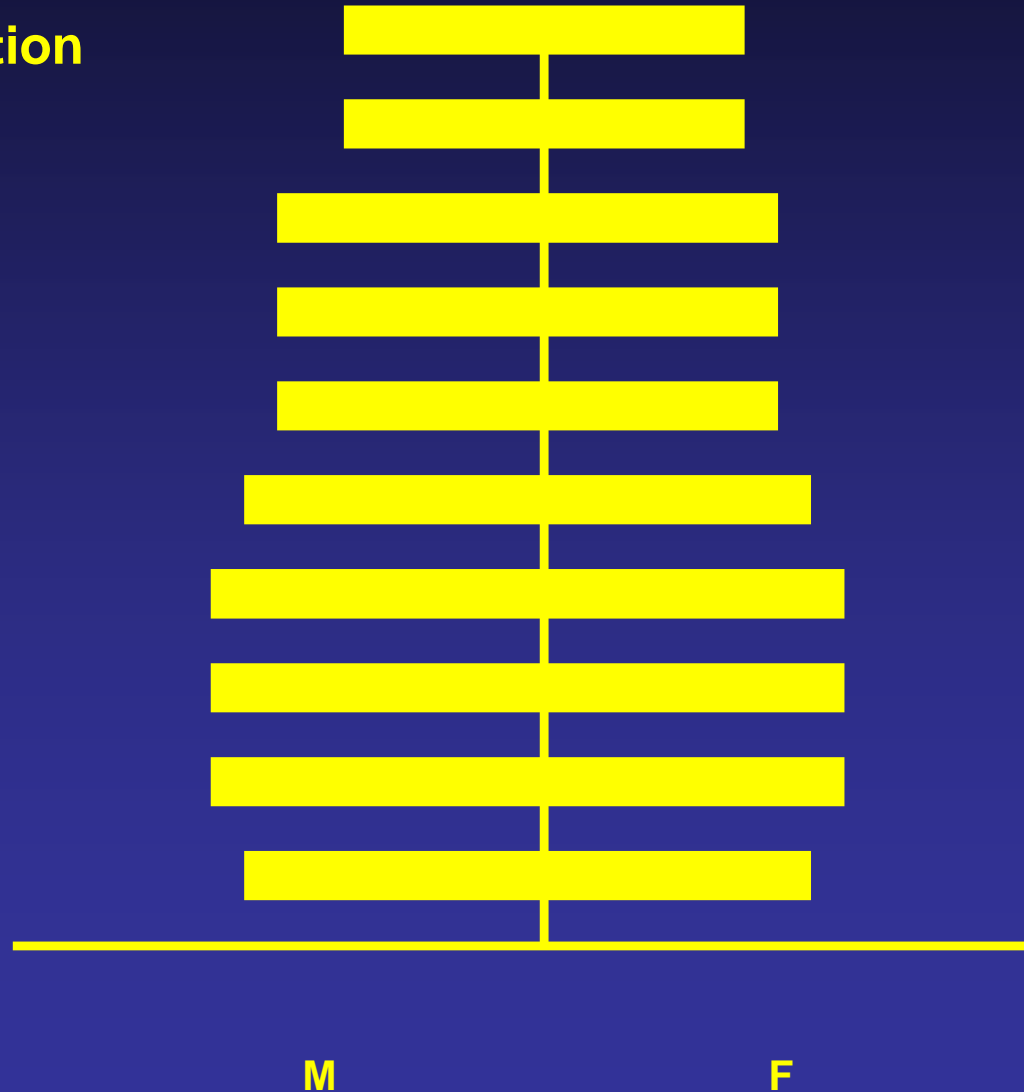
Transformation (contd)

- It is clear that Aboriginal people in mine hinterlands are undergoing profound & arguably accelerating change; the issue is not change, but its control & direction. e.g.
 - Major demographic changes (of which more later);
 - Destructive impacts of welfare, alcohol, poor health, etc.
 - People increasingly living off, or on periphery of, country;
 - Claimant groups living in polyglot communities, dispersed across wide regions with only intermittent contact with other members of the group;
 - Mostly living in situations where younger generations exposed to considerable diversity of values (Bourdieu: 'doxa' > 'heterodoxy');
 - Internal conflicts / politics of identity;

The demographics of transformation (1)

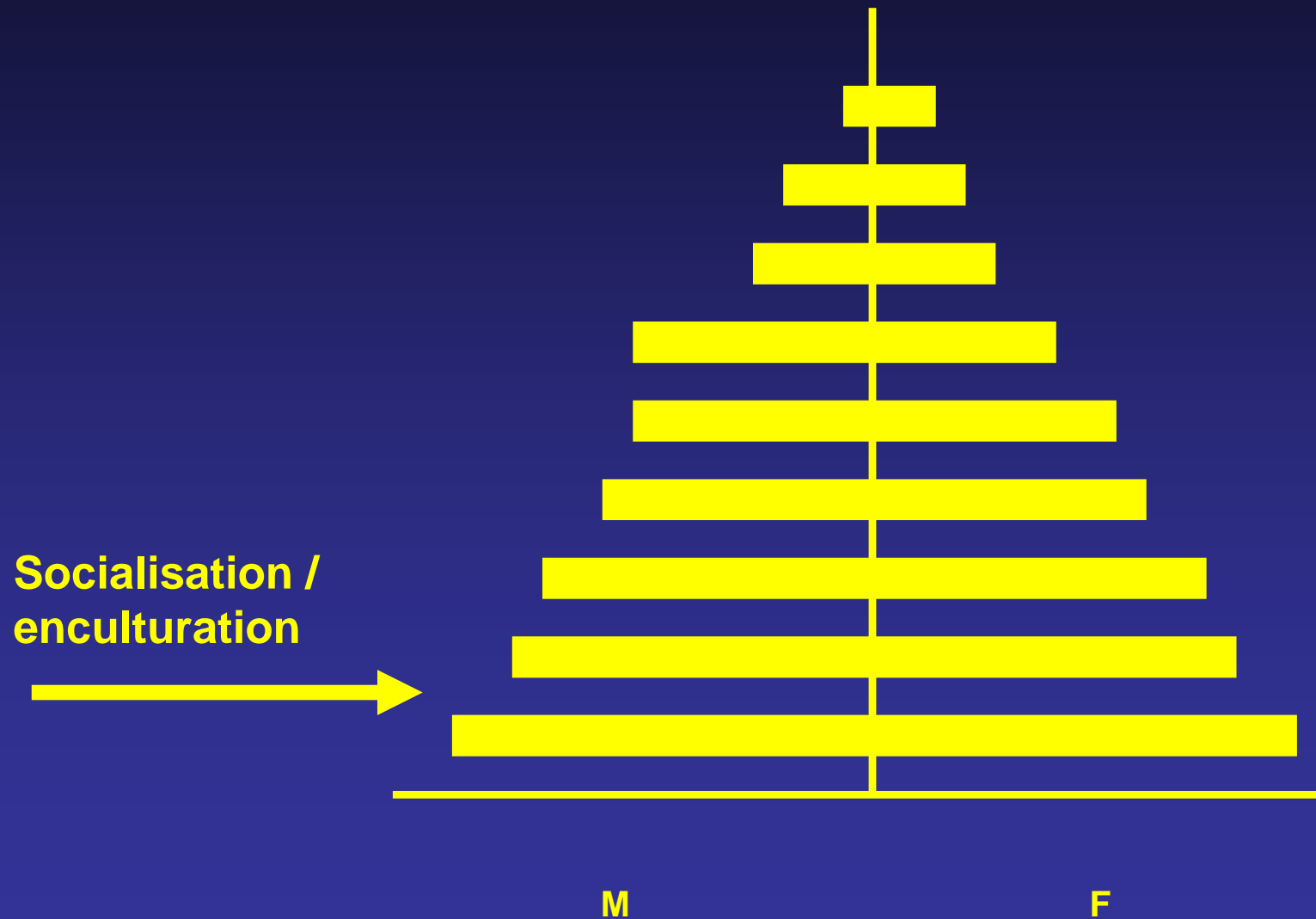
General Australian population

Enculturation



The demographics of transformation (2)

Aboriginal population



Transformation (contd)

- Such transformative factors need to be explicitly taken into account in negotiating, designing and implementing agreements: For example:
 - Aboriginal authority structures and leadership domains e.g.
 - not unwittingly building in 'cultural enclave' principles – e.g. unchanging nature of 'traditions', Law etc;
 - Not building in 'obsolescence' e.g. 'traditionalist' notions of authority of 'elders' in domains where they may demonstrably not have such authority;
 - Being alert to different principles which may operate in different governance arenas – e.g. decision making principles re 'country', cf those re commerce

Transformation (contd)

- Being alert to the implications of the complex interplay in Aboriginal societies between the local and individual on the one hand, and the collective or community on the other; e.g.
 - not focusing solely on 'community' based benefits
 - Being alert to the implications of deeply embedded enduring practices such as 'demand sharing' & assertive egalitarianism (e.g. in case of financial benefits)
- Being alert to the implications of the pervasive dialogue within Aboriginal societies around collective social forms in tension with the realities of localism – e.g. as shown in
 - individual entrepreneurship, stress on local group autonomy, ethical and political frameworks centred on kin groups.

4. Governance for diversity

- Most agreements have a 'mainstream' notion of economic development embedded in them;
- Focus on facilitating individual and perhaps family entrepreneurship and economic advancement;
- Typically however there is a wide diversity of views amongst Aboriginal people concerning legitimate ways of engaging with the dominant society;
- For long term viability of an agreement, its governance must be predicated on managing and supporting diversity in aspirations, ways of life, life trajectories etc.

Recognising diversity (contd)

- Many modern agreements do provide benefits in areas other than employment, business development etc.
 - however, these may not be of particular significance to the mining company or government;
 - their delivery may be poorly resourced and supported, and vulnerable to failure;
 - These benefits may however be seen as very significant by Aboriginal people concerned;
 - The incapacity of agreement governance institutions to manage conflicts over benefits and benefit flows can adversely impact on agreement viability.

Concluding remarks

- Agreement governance needs focused attention in negotiations, and is a critical implementation issue;
- It needs to be developed, and implemented, as a system rather than just an array of disconnected entities and processes;
- Governance capacity (for Indigenous and non-Indigenous parties) should be developed, if possible ahead of agreement implementation;
- Agreement governance should be understood as intercultural, and not designed and implemented in 'cultural enclave' terms;
- Agreements need to explicitly build for transformation, not implicitly support traditionalism;
- At the same time, to be sustainable agreement governance needs to facilitate diversity in Indigenous stakeholders' goals and aspirations.