Life after statutory individual agreements in the Western Australian mining industry: Management strategic choices in response to a changing employment relations regulatory environment

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Abstract

Statutory individual agreements (SIAs) were a part of the federal Australian employment relations (ER) regulatory system from 1997 till 2009, when they were removed through the introduction of the *Fair Work (FW) Act 2009*. The Labor government opted for their removal as it stated that the agreements produced unfair labour market outcomes, and that management had used them to de-unionise operations. Although SIAs were only used by a minority of employers across Australia, they were extensively used by organisations in the Western Australian (WA) mining industry. This industry was one of the most vocal advocates of these individual contracts and vehemently opposed their removal.

This qualitative industry case study research explores what strategic choices management of organisations operating in the WA mining industry made in response to the removal of the SIAs from the federal ER regulatory system, why management made the strategic choices they did, and how these choices as well as the regulatory changes affected their organisations. The data for the project came from semi-structured interviews with mining industry managers and industry experts, as well as analysis of an array of documents (industrial agreements, media releases, public policy documents, etc.).

In this research the strategic choice framework (Kochan, Katz & McKersie 1986) functions as the main theoretical lens through which the findings are analysed, whilst the strategic negotiations framework (Walton, Cutcher-Gershenfeld & McKersie 1994), New Chicago School (NCS) regulation theory (Lessig 1998) and the construct of regulatory space (Hancher & Moran 1989) provide refinements that allow for a more in-depth investigation of specific parts of the strategic choice framework.

It will be shown that management in the WA mining industry initially used the SIAs to establish the organisations’ preferred ER/HR arrangements, these were reflected by substantial levels of managerial prerogative and control as well as no union involvement in the organisations. The preferred workplace relations provided management with significant levels of flexibility, high levels of industrial certainty, and enabled them to quickly respond to operational requirements.
The *FW* regime forced a changed agreement making process upon organisations. Management, however, wanted to retain their existing workplace relations, therefore the observed strategic choices were aimed at maintaining the status-quo, or as much of it as possible, for as long as they could. In general it was found that management used the regulatory provisions available to them to successfully ensure the continuation of their preferred workplace relations, whereby the transitional legislation in the transitional period (2008-2009) as well as the transitional provisions of the *FW Act 2009* played a critical role in enabling management to achieve this. Managements’ strategic choices provided organisations with further time to entrench their existing workplace relations which were partly established through the use of SIAs.

One of the major changes that has materialised in industrial agreement making in the WA mining industry, in relation to those employees who were previously covered by SIAs, was the increase of unions as signatories to the enterprise agreements (EAs) concluded under the *FW* regime. While unions in some instances participated in the EA negotiations, overall they played a relatively limited role in the majority of instances. Still this is in shrill contrast to the union exclusion that was taking place under the SIAs, thus altering the labour-management social contract. At the same time it was also in stark contrast to the by managements’ predicted outcome of union dominant bargaining under the *FW* regime.

Contractor organisations, however, had more difficulties in retaining their preferred workplace relations than the mining companies. This was due to a combination of pressures from clients and the short-term nature of the work which precluded the strategic ‘exploitation’ of the regulatory transitional options that enabled the mining companies to lock-in their existing arrangements. Also the contractors’ more extensive reliance on greenfield agreements placed them in a different position to that of the mining companies.
# Table of Contents

Abstract ........................................................................................................................................... i

Table of Contents .......................................................................................................................... iii

List of Figures ................................................................................................................................... vii

List of Tables ................................................................................................................................... vii

List of Acronyms .......................................................................................................................... viii

Acknowledgements ....................................................................................................................... ix

Chapter 1 – Introduction: SIAs as a form of employment relationship ........................................ 1

Introduction .............................................................................................................................. 1

1.1 What are Statutory Individual Agreements? ................................................................. 2

1.2 A Brief History of Statutory Individual Agreement Making in Australia......................... 2

1.2.1 SIAs in the WA State system – The Workplace Agreements (WPAs) .............................. 3

1.2.2 SIAs in the Federal system – The Australian Workplace Agreements (AWAs) ............ 5

1.2.3 The impact of the Work Choices reforms on SIAs ..................................................... 10

1.2.4 Phasing out SIAs in the transitional period – From AWAs to ITEAs ............................. 12

1.2.5 The removal of SIAs – The Fair Work Act 2009 regime ............................................ 14

1.3 Continued Employer Lobbying for SIAs ............................................................................ 17

1.4 The Significance of SIAs in the WA Mining Industry ......................................................... 18

1.5 Research Question ............................................................................................................. 20

1.6 Outline of the Thesis ......................................................................................................... 21

Chapter 2 – Literature Review and Building a Theoretical Framework ...................................... 23

Introduction ............................................................................................................................ 23

2.1 Managerial Strategic Choice in Changing Regulatory Environments ............................... 24

2.1.1 What are strategic choices? ...................................................................................... 24

2.1.2 From systems theory to strategic choice .................................................................. 28

2.1.3 The strategic choice framework ................................................................................ 28

2.2 Analysing Agreement Making within the Strategic Choice Framework ........................... 32

2.2.1 The strategic negotiations framework ...................................................................... 32

2.2.2 The desirability and feasibility of change to the labour-management relations ...... 33

2.2.3 Strategic negotiation outcomes – The substantive terms and social contract .......... 33

2.2.4 Realising the outcomes – The interaction system .................................................... 36

2.3 Improving the Understanding of the Regulatory Environment ....................................... 38

2.3.1 Legal regulation and employment relations ............................................................. 39

2.3.2 New Chicago School regulation theory ..................................................................... 40

2.3.3 The regulatory space construct ................................................................................. 41

Conclusion .............................................................................................................................. 43

Chapter 3 – The Context: Employment relations in the WA mining industry ............................ 47

Introduction ............................................................................................................................ 47

3.1 The Key Characteristics of the WA Mining Industry ......................................................... 47
3.1.1 Economic conditions shaping ER in mining ............................................................... 48
3.1.2 Geographical considerations affecting ER ................................................................. 50
3.1.3 Labour-management tensions in the WA mining industry ........................................ 51
3.1.4 Unions in the WA mining industry ............................................................................. 52
3.1.5 Technology’s impact on ER in mining ........................................................................ 52
3.1.6 Differences between underground and open-cut mining ........................................ 53
3.1.7 Other developments affecting labour-management relations in mining ................. 53
3.2 ER in the WA Iron Ore industry in the pre-SIA era ...................................................... 55
3.3 The use of SIAs in the WA mining industry .................................................................... 61
3.3.1 The use of SIAs throughout the WA mining industry ................................................. 61
3.3.2 Individualisation at Rio Tinto Iron Ore (Hamersley Iron) ......................................... 63
3.3.3 BHP Billiton Iron Ore’s uptake of SIAs ................................................................. 64
3.4 The Characteristics of the Major Miners SIA regimes ................................................... 67
3.4.1 The shift from the state to the federal ER regulatory system ................................... 70
3.4.2 Life after SIAs ............................................................................................................. 72
Conclusion ............................................................................................................................. 74
Chapter 4 – Methodology: The Trials and Tribulations of Getting Data ......................... 77
Introduction .......................................................................................................................... 77
4.1 Positioning of the Research .......................................................................................... 77
4.1.1 Ontology – Relativist ................................................................................................. 78
4.1.2 Epistemology – Constructivist ................................................................................ 79
4.1.3 Methodology – Qualitative research ....................................................................... 82
4.2 Research Design .......................................................................................................... 83
4.2.1 Case study approach ............................................................................................... 83
4.2.2 Defining the case as industry .................................................................................... 84
4.2.3 Quality and credibility of this research .................................................................... 86
4.2.4 Ethics in this research .............................................................................................. 88
4.3 The Emergent Research Design ................................................................................ 89
4.3.1 From the proposed to the actual research design .................................................... 89
4.3.2 From a multi to a single industry case study .......................................................... 92
4.4 Data Collection ........................................................................................................... 93
4.4.1 Participant recruitment strategies for management interviews ................................ 93
4.4.2 The interviews ......................................................................................................... 96
4.4.3 Secondary data sources .......................................................................................... 99
4.4.4 Characteristics of mining organisations included in the research ......................... 99
4.5 Data Analysis .............................................................................................................. 100
4.5.1 Coding the data with NVIVO ................................................................................ 100
4.5.2 Thematic analysis of interview transcripts ............................................................ 101
4.5.3 Document analysis ................................................................................................. 102
Conclusion ............................................................................................................................ 103

Chapter 5 – SIAs in the WA Mining Industry............................................................................. 105

Introduction .......................................................................................................................... 105

5.1 SIA Making in WA Mining Industry – The Historical Context ........................................ 106

5.2 The SIAs Rationale – The Industry’s Preferred ER/HR arrangements .............................. 107

5.2.1 Industrial certainty .................................................................................................. 108

5.2.2 Union related concerns ........................................................................................... 108

5.2.3 The implementation of organisational change ....................................................... 111

5.2.4 Contractor motivations ........................................................................................... 112

5.2.5 Conclusion ............................................................................................................... 114

5.3 How SIAs Were Used ...................................................................................................... 115

5.3.1 The SIA offers – How SIAs were offered and how ‘individual’ they were............... 115

5.3.2 SIAs offered increased organisational flexibilities .................................................. 116

Conclusion ............................................................................................................................ 122

Chapter 6 – The Transitional Period: Preserving the Preferred ER/HR Arrangements ......... 125

Introduction .......................................................................................................................... 125

6.1 Managements’ Strategic Choices in the Transitional Period .......................................... 126

6.2 Managements’ Concerns with the Fair Work Act ........................................................... 128

6.3 How ECAs preserved the industry’s preferred ER/HR arrangements ............................ 131

Conclusion ............................................................................................................................ 134

Chapter 7 – The Fair Work Act: Life without SIAs ..................................................................... 137

Introduction .......................................................................................................................... 137

7.1 What happened to SIAs under the FW regime? ............................................................. 138

7.2 Agreement Making under the FW regime ..................................................................... 140

7.2.1 Rationale for the use of Enterprise Agreements under the Fair Work Regime ...... 141

7.2.2 Agreement making under the FW regime ............................................................... 143

7.3 Changes in the content of industrial instruments since SIAs ......................................... 153

7.3.1 Analysing the changes from ECAs to EAs ................................................................. 154

7.3.2 Analysing the flexibility of EAs ............................................................................... 159

7.3.3 The contractors’ greenfield agreements ................................................................. 166

7.4 The Social Contract under the Fair Work regime ......................................................... 167

7.4.1 The management-union relations ........................................................................... 167

7.4.2 The management-employee relations .................................................................... 171

7.5 Operating without SIAs in the WA Mining Industry ....................................................... 173

7.6 Differences between Resources Contractors and Mining Companies ............................ 178

7.7 Management Agreement Making Strategies under the FW regime ............................... 179

Conclusion ............................................................................................................................ 181

Chapter 8 – Discussion ........................................................................................................ 185

8.1 Reflection on the main findings ...................................................................................... 186
8.1.1 Managements’ preservation of their preferred workplace relations .................. 187
8.1.2 The importance of the transitional period ..................................................... 191
8.1.3 Changes in the labour-management social contract ....................................... 192
8.1.4 The implications of the removal of SIAS on operations ............................... 196
8.1.5 Differences in outcomes between mining companies and contractors .......... 198
8.1.6 Importance of context and history for industry analysis .............................. 199

8.2 Theoretical Discussion of the Findings .............................................................. 200
8.2.1 Role of strategic choice framework ............................................................... 201
8.2.2 Role of strategic negotiations framework .................................................... 204
8.2.3 Role of NCS regulation theory ..................................................................... 205
8.2.4 Role of the regulatory space construct ........................................................ 207
8.2.5 Theoretical contribution of this thesis .......................................................... 210

8.3 Limitations ........................................................................................................... 211
8.4 Future directions .................................................................................................. 214
8.4.1 Future research .............................................................................................. 214
8.4.2 Future public policy ....................................................................................... 216

Conclusion .................................................................................................................. 219
Reference List ............................................................................................................. 221
Appendices .................................................................................................................. 239
  Appendix 4.1 – Copy of Human Research Ethics Approval ............................... 239
  Appendix 4.2 – Overview Interviews ................................................................. 240
  Appendix 4.3 – Extra Info LinkedIn Participant Recruitment Strategy .......... 243
  Appendix 4.4 – Other Participant Recruitment Notifications .......................... 244
  Appendix 4.5 – Template Interview Schedules .................................................. 245
    Example 1 – Employer Association Representative ....................................... 245
    Example 2 – Trade Unions .............................................................................. 249
    Example 3 – ER/HR managers ........................................................................ 253
  Appendix 4.6 – Tree Maps Nodes Research Project in NVIVO .......................... 255
  Appendix 4.7 – Anonymised Example SIAs from the Mining Industry ............ 259
    Example 1 – AWA Work Choices (Doc0003B.pdf) ......................................... 260
    Example 2 – AWA Fairness Test (AWA0045.pdf) .......................................... 271
    Example 3 – ITEA (Mining2.pdf) .................................................................... 284
List of Figures

Figure 1.1 Timeline on the availability of the various industrial instruments ............................ 13
Figure 2.1 General framework for analysing industrial relations issues ........................................ 29
Figure 2.2 Detailed framework for analysing a strategic negotiation .................................................. 32
Figure 2.3 New Chicago School (NCS) Regulation Theory ......................................................... 40
Figure 4.1 Participant recruitment notification used in LinkedIn Groups ..................................... 94
Figure 5.1 Overview of successive federal ER regulatory regimes in relation to SIAs ............... 105
Figure 5.2 Employee duties examples from mining industry SIAs sample ............................... 118
Figure 6.1 Overview of successive federal ER regulatory regimes in relation to SIAs ............... 125
Figure 7.1 Overview of successive federal ER regulatory regimes in relation to SIAs ............... 137
Figure 8.1 Overview of successive federal ER regulatory regimes in relation to SIAs ............... 185
Figure 8.2 Pathways of successive industrial instruments ....................................................... 188
Figure 8.3 Forms of the labour-management social contract .................................................. 193
Figure 8.4 Regulatory space feedback loop portrayed in strategic choice framework ............ 211

List of Tables

Table 1.1 The mining industry’s own estimates on uptake of SIAs ............................................ 18
Table 1.2 Unpublished ABS DATA - Proportion of non-managerial employees on AWAs in the WA mining industry .................................................................................................................... 19
Table 2.1 Three levels of industrial relations activities ............................................................... 30
Table 2.2 Forms of the labour-management social contract ...................................................... 35
Table 3.1 Management objective through the use of SIAs ......................................................... 68
Table 4.1 Paradigm questions ..................................................................................................... 78
Table 4.2 Constructivist positions for strategy research ............................................................ 82
Table 4.3 Role of interviewees .................................................................................................... 97
Table 4.4 Role of those interviewees with direct involvement in the WA Mining Industry ....... 98
Table 4.5 Mining industry organisations in the study ............................................................... 100
Table 5.1 Rationales for the introduction of SIAs presented by interviewees ......................... 108
Table 5.2 Definition of the flexibilities achieved for management through SIAs ..................... 117
Table 5.3 Forms of remuneration flexibility ............................................................................. 120
Table 7.1 Overview status industrial instruments of organisations under FW Act at time of interviews (May 2012 – August 2013) ................................................................. 140
Table 7.2 Definition of organisational flexibilities .................................................................... 160
## List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>AMMA</td>
<td>Australian Mines and Metals Association</td>
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<tr>
<td>AWA</td>
<td>Australian Workplace Agreement</td>
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<tr>
<td>BCA</td>
<td>Business Council of Australia</td>
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<tr>
<td>BHPBIO</td>
<td>BHP Billiton Iron Ore</td>
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<tr>
<td>CME</td>
<td>Chamber of Minerals and Energy of Western Australia</td>
</tr>
<tr>
<td>CPI</td>
<td>Consumer Price Index</td>
</tr>
<tr>
<td>DEEWR</td>
<td>Department of Education, Employment and Workplace Relations</td>
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<tr>
<td>EBA</td>
<td>Enterprise Bargaining Agreement</td>
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<tr>
<td>ECA</td>
<td>Employee Collective Agreement</td>
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<tr>
<td>EA</td>
<td>Enterprise Agreement</td>
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<td>EAR</td>
<td>Employer Association Representative</td>
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<td>EEA</td>
<td>Employer Employee Agreement</td>
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<td>ER</td>
<td>Employment Relations</td>
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<td>EX</td>
<td>Industry Expert</td>
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<td>FIFO</td>
<td>Fly-in-fly-out</td>
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<td>FW</td>
<td>Fair Work</td>
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<td>FWA</td>
<td>Fair Work Act 2009</td>
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<td>FWC</td>
<td>Fair Work Commission</td>
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<td>FWO</td>
<td>Fair Work Ombudsman</td>
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<tr>
<td>GFB</td>
<td>Good Faith Bargaining</td>
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<tr>
<td>GFC</td>
<td>Global Financial Crisis</td>
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<tr>
<td>IFA</td>
<td>Individual Flexibility Agreement</td>
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<tr>
<td>IPMS</td>
<td>Individual Performance Management System</td>
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<tr>
<td>IR</td>
<td>Industrial Relations</td>
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<tr>
<td>ITEA</td>
<td>Individual Transitional Employee Agreement</td>
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<tr>
<td>MC</td>
<td>Mining Company</td>
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<td>MN</td>
<td>Manager</td>
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<tr>
<td>NES</td>
<td>National Employment Standards</td>
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<tr>
<td>OEA</td>
<td>Office of the Employment Advocate</td>
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<td>RC</td>
<td>Resources Contractor</td>
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<td>RTIO</td>
<td>Rio Tinto Iron Ore</td>
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<tr>
<td>SIA</td>
<td>Statutory Individual Agreement</td>
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<td>TU</td>
<td>Trade Union Official</td>
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<td>Western Australia</td>
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<td>WPA</td>
<td>Western Australian Workplace Agreement</td>
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<td>WRA</td>
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Chapter 1 – Introduction: SIAs as a form of employment relationship

Introduction

Statutory individual agreements (SIAs) were unique and controversial industrial instruments through which parties could regulate the employment relationship. SIAs have been part of the Australian employment relations (ER) landscape in various forms under state and federal ER regulatory systems from the 1990s. Employers used them until 2010 when they were removed as the *Fair Work Act 2009* became fully operational. This research explores the implications of the removal of SIAs from the federal Australian ER regulatory system for organisations operating in the Western Australian (WA) mining industry, as management considered the agreements to be an integral part of the industry’s preferred workplace relations.

When SIAs were part of the ER landscape they were subjected to heavy debate. Gollan (2004, p. 117) explained that there were strong proponents and opponents of these individual agreements. On the one hand advocates of the agreements, such as the Howard government who introduced them under the federal ER regulatory system, argued that they were vehicles for better workplace practices leading to increased flexibility, productivity, and ‘high trust’ labour-management relations (Van Barneveld & Nassif 2003). On the other hand the opponents argued that they produced unfair labour market outcomes by allowing stripping away compensation for non-standard working hours, that they resulted in work-intensification, whilst they were also criticised for being management tools that could be used to de-unionise operations (Cooper et al. 2009; Cooper & Ellem 2011; Peetz 2002). Irrespective of the ways in which they were used, SIAs have always been more tailored towards the needs of employers than those of employees, this despite the governments’ rhetoric (Sheldon & Kohn 2007; Van Barneveld & Nassif 2003, pp. 21-22).

The next section of this chapter explains what SIAs were and how they worked. The chapter then offers an overview of the ER regulatory regimes in Australia which gave rise to SIAs in the 1990s, and then to their removal in 2010. This chapter explains the significance of SIAs for the WA mining industry. It also outlines why for the ER
scholarship is of relevance that the removal of SIAs for this particular industry is researched. This is followed by the research question of this project, and finally the outline for this thesis is presented.

1.1 What are Statutory Individual Agreements?
Statutory individual agreements (SIAs) are individual contracts that were introduced under both state and federal Australian ER regulatory systems as part of the ‘modernisation’ of labour laws in the early 1990s. They created another bargaining stream for employers through which they could regulate the employment relationships with their workforces and bypass the traditional collectively-based systems of awards and enterprise bargaining agreements (Creighton 2003).

The role of individual common law contracts prior to the introduction of SIAs had been minimized by the operation of awards and enterprise bargaining agreements (EBAs). These collective industrial instruments already dealt with most substantive and procedural matters of the employment relationship, and it wasn’t possible to contract out of these conditions (Creighton 2003, p. 103). SIAs, however, had the capacity to override and entirely replace the collective industrial instruments, in contrast to individual common law contracts (Creighton 2003; McCallum 1997). Advocates of the SIAs justified their existence partly because of this ability to break with the “rigidities” of the collective industrial instruments and to provide for greater workplace flexibility (Van Barneveld & Waring 2002).

1.2 A Brief History of Statutory Individual Agreement Making in Australia
The introduction of SIAs took place in the context of broader neo-liberal economic reforms, and one of the core objectives of the workplace relations reforms was the decentralization and deregulation of the ER regulatory system(s). The move towards a more individualized labour market in Australia was similar to the New Zealand experience, which historically had been another country that relied for its ER regulation on a system of compulsory conciliation and arbitration (Lansbury, Wailes & Yazbeck 2007, pp. 639-640). Although the trend towards more individualised employment relations is in no way unique to Australia, the way in which state and
federal Australian governments introduced and later removed parallel individual bargaining regimes was.

The focus of this thesis is on the history of SIAs in WA. The WA legislation that introduced them will be outlined. This will be followed by the Howard Coalition government’s *Workplace Relations Act 1996 (Cth)*, which introduced SIAs into the federal ER regulatory regime in the form of Australian Workplace Agreements (AWAs). Thirdly, the changes to the *Workplace Relations Act 1996* through the *Work Choices* reforms are dealt with. Fourthly, the transitional legislation which assisted in the phasing out of the SIAs is discussed, followed lastly by the implications of the *Fair Work Act 2009 (Cth)* (FWA) for the ER regulatory regime, under which SIAs ceased to exist.

1.2.1 SIAs in the WA State system – The Workplace Agreements (WPAs)

The Liberal-National Party Coalition government introduced the Western Australian workplace agreements (WPAs) – the state SIAs – into the WA state ER regulatory system in 1993 (Bailey & Horstman 2000; Keirath 1995). WA was not the first of the Australian states to introduce SIAs, which was Victoria (Peetz 2002), nonetheless the available evidence suggests that the relative uptake of SIAs was highest in WA (Peetz & Preston 2007, p. 14; Wooden 2000, p. 1).

The WPAs could be “made outside the jurisdiction of the Commission, replacing the conditions set in collectively negotiated awards” (Baird, Ellem & Wright 2005, p. 4). The *Workplace Agreements Act 1993 (WA)* put in place these state SIAs as a separate individual bargaining stream which operated alongside rather than under the traditional system of compulsory conciliation and arbitration (Bailey & Horstman 2000, p. 3; Keirath 1995). Because of their capacity to circumvent the traditional systems the WPAs were quite popular amongst management as it allowed them to deviate their terms and conditions of employment from the awards (Bailey & Horstman 2000; Berger 2000; Todd, Caspersz & Sutherland 2006).

In many respects the WA system preceded the Howard government’s federal policies (Zulsdorf 2006). The WPAs could be a pre-condition of employment and offered on a take-it-or-leave-it basis and were then registered with a specially created government agency, not the industrial relations commission. The content of the agreements was
further kept confidential through secrecy provisions (Bailey & Horstman 2000, p. 6). WPAs could be made to last up to five years and their safety net had no reference to the awards but rather to a limited set of statutory minima (Todd, Caspersz & Sutherland 2006).

Three different groups of employers chose to use the WPAs (Todd, Caspersz & Sutherland 2006, pp. 509-510). Firstly, the government sector used the agreements to increase managerial control and comply with state government policy. Secondly, employers in the labour intensive service sectors, including hospitality, cleaning, and property and business services, used WPAs to reduce their wage costs by, for example, removing the compensation for non-standard work hours. Thirdly, organisations in the mining industry were “motivated by a combination of union exclusion and the opportunity to introduce substantial changes to work practices and employment conditions to facilitate an increase in productivity and a reduction in costs” (Todd, Caspersz & Sutherland 2006, p. 511). Hamersley Iron, for example, had been most successful under the WA state system in transitioning its workforce in the iron ore mining industry to ‘all staff’ arrangements using the WPAs (Hearn Mackinnon 2009; Tracey 2003) – discussed in more detail in Chapter 3.

WA’s WPAs were controversial for three reasons. Firstly, they privileged individual over collective bargaining. Secondly, there were concerns with the way in which the system operated which was, for example, reflected by the secrecy provision. Thirdly, the labour market outcomes realised under the WPAs raised community concerns, in particular the agreements became increasingly controversial when momentum was built around their impact on the lower-paid industries where considerable undercutting of award conditions had taken place. WPAs further contributed to increased gender pay gaps (Preston & Crockett 1999; Van Barneveld & Waring 2002, p. 108). Also managements’ use of the agreements as a de-unionisation tool contributed to their demise in the WA state system (Riley 2003; Sheldon & Thornthwaite 2003; Todd, Caspersz & Sutherland 2006; Zulsdorf 2006). Throughout the 1990s there was, however, a substantial growth in the use of WPAs (Wooden 1999, p. 420).

One of the electoral promises of the Gallop WA Labor government, before it replaced the WA Liberal-National Party Coalition government in 2001, was to reverse the
individualization that had occurred across workplaces in WA. It was the intent of the Gallop government to force employers back to the collective industrial instruments (Todd, Caspersz & Sutherland 2006, pp. 512-515). Therefore the WPAs were replaced by the much more circumscribed Employer Employee Agreements (EEAs), which were enacted through the Labour Relations Reform Act 2002 (WA). The changed ER regulatory regime threatened the employers’ preferred individual workplace relations regimes as they considered the EEAs inoperable.

The WPAs were quite popular amongst employers and rather than embracing a more collectivist regime, a substantial number of organisations instead leapfrogged to the federal ER regulatory system where they could continue to operate on different SIAs (Todd, Caspersz & Sutherland 2006, p. 512; 515). What becomes apparent from the findings of Todd, Caspersz and Sutherland (2006) is that employers rejected the Gallop government’s regime based on a collectivist underpinning. The authors concluded that employers were aided in their rejection by the possibility of exploiting regulatory inconsistencies between the state and federal ER regulatory regimes (Todd, Caspersz & Sutherland 2006, p. 518).

1.2.2 SIAs in the Federal system – The Australian Workplace Agreements (AWAs)
The Australian Workplace Agreements (AWAs) – the federal SIAs – were introduced into the federal ER regulatory system in 1996 when the Howard Coalition Government continued the trend of the neoliberal and deregulatory reform that had already been set in motion under the Keating Labor Government. The then Minister for Workplace Relations outlined the objective of the legislative reforms in the Workplace Relations Act 1996 (Cth) (WRA 1996), which introduced the AWAs:

“Our legislation puts the emphasis on direct workplace relationships, and on the mutual interest of employer and employee in the success and prosperity of the enterprise. The bill promotes a legislative framework, without unnecessary complexity or unwanted third party intervention.” (Reith, 23 May 2006) (cited in Dabscheck 2006, p. 9)

The WRA 1996, at the time, was subject to intense debate which led some commentators such as Lee (2006, p. 85) to classify its bargaining framework as “unjust,
inefficient and inequitable”. This conclusion was predominantly based on the AWAs, which were one of the foundations on which the WRA 1996 was built (McCallum 1997, p. 2; Van Barneveld & Waring 2002, pp. 104-105).

The WRA 1996 was introduced in response to active lobbying of employer associations like the Business Council of Australia (BCA) and free market advocate groups such as the HR Nicholls society for more choice and flexibility in the labour market (Van Barneveld & Arsovska 2001, p. 88). Scholars have suggested that the then Minister, Peter Reith, (Van Barneveld & Waring 2002, pp. 104-105) had come up with the proposal of SIAs in the federal sphere in response to the legislative hurdles Comalco, a mining organisation, experienced in its attempt to move employees at Weipa from the award to a common law staff system (Timo 1998).

SIAs provided the ‘New Right’ with the capacity it had long sought to bypass both unions and the tribunals (Plowman 1987), which was most clearly evidenced by the AWAs, which privileged individual over collective agreement making. The statutory individual bargaining stream also reflected the long-held ideological beliefs of a number of senior cabinet ministers, including the prime minister, for extensive labour market reform (Rowse 2004). Despite the free market philosophy that the government was preaching it actually took quite an interventionist approach in promoting the AWAs (Van Barneveld & Waring 2002, p. 107).

AWAs were effectively WPAs with more constraints. The AWAs became available in March 1997. This was the first time under the federal ER regulatory regime that individual contracts had the capacity to replace awards and EBAs (McCallum 1997, p. 1; Tham 1999, p. 142). Instead of relying on the labour powers in the constitution the government was able to maximize the potential coverage of the AWAs by using other constitutional powers (McCallum 1997). Like WPAs, AWAs were also taken outside the scope of the tribunals. The federal government placed the AWAs under the administration of the newly set-up Office of the Employment Advocate (OEA) (Gollan 2004; Peetz 2004; Roan, Bramble & Lafferty 2001). AWAs similar to WPAs were also confidential documents, and the OEA could only release limited information about their content (Cooper & Ellem 2008, p. 538; McCallum 1997, p. 8). There were, however, also some distinct differences between the WPAs and the original AWAs.
Employers often hailed the simplicity of the WPAs, whereas implementing AWAs was described as a far more complex and cumbersome process due to legal requirements arising from the compromises made to get the legislation through the Senate (McCallum 1997, pp. 5-6; Todd, Caspersz & Sutherland 2006).

There are varying estimates on the uptake of the AWAs. The official Australian Bureau of Statistics (ABS) data revealed that AWAs never covered more than 3-4 per cent of the workforce across Australia (ABS 2000-2010). There has, however, been some ambiguity about these figures. The Department of Employment and Workplace Relations estimated that in 2006 the coverage rate of AWAs was around 7.7 per cent (DEEWR 2007, p. 77), whilst it has even been estimated that at their height ‘live’ AWAs may have covered up to around 9.3 per cent of the workforce in 2007 (Sheldon & Kohn 2007, p. 117). The Fair Work Act Review (2012, p. 277) estimated that in 2008 the AWA coverage was around 5 to 7 percent of the Australian workforce.

Employers in WA had a relatively high uptake of the AWAs. After the removal of the WPAs there was an increased uptake of AWAs by WA employers. This was reflected by the fact that over a quarter of the agreements lodged with the OEA in the period 2002 till 2007 were from WA, whilst the state only accounts for slightly over 10 per cent of the total workforce in Australia (ABS 2000-2012; Fair Employment Advocate 2007, p. 13; Todd, Caspersz & Sutherland 2006, p. 515). Notwithstanding that there were also SIAs under the state systems in Victoria and Queensland (Bray & Waring 2006, p. 54; Roan, Bramble & Lafferty 2001, p. 390) it would appear that the culture of statutory individual agreement making was nowhere as institutionalized as in WA. Mitchell and Fetter (2003, p. 305) attribute this largely to the high uptake of WPAs in the state ER regulatory system.

McCallum (1997, p. 12), in the early days of the agreements, predicted that “AWAs are likely to be relegated to the sleepy back-water of Australian industrial relations law” because of their complex nature. Despite the government’s determination to promote and facilitate the agreements, McCallum (1997) was correct that AWAs never became the dominant industrial instrument regulating employment relations across Australia.

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1 Peetz and Preston (2009, p. 447) explained that the Australian Bureau of Statistics Employee Earning and Hours were the most reliable data on the actual number of AWAs in place.
It would, however, be incorrect to therefore assume that their influence was limited. Peetz (2002, p. 40) explained that “low numbers should not understate the importance of registered individual contracts, such as AWAs, as a strategic employment relations device”. The SIAs did not only affect those employees who were covered by them, the agreements were also a strategic negotiation tool for management during collective negotiation, whereby the threat of AWAs, could be used to force unions into concession bargaining (Peetz 2002).

Van Barneveld and Nassif (2003) identified three key management rationale for implementing the agreements, which directly influenced the outcomes for their employees. Firstly, and in line with the ‘high performance’ and ‘high trust’ advocates, there were examples of organisations that introduced the agreements to implement organisational change, foster direct employer-employee relationships, and build trust relationships (Van Barneveld & Nassif 2003, p. 25). The work of Gollan and Hamberger (2003), Gollan (2004), and Wooden (1999) provided evidence that this was indeed the goal for some employers.

The second motivation that Van Barneveld and Nassif (2003, p. 27) identified was “to avoid or eliminate union presence in the workplace”. Since, in most instances, AWAs rendered union negotiated EBAs ineffective they could be perceived as a mechanism to undermine collective bargaining. There is empirical evidence which suggests there is a direct link between the incidence of AWAs and union density (Peetz 2002). It was found that “individual contracts are not being used simply to vacate the space left by union absence, but are performing an active function in creating that space” (Peetz 2002, p. 43). There were several reasons why SIAs were a preferred instrument for a de-unionization approach. AWAs had the capacity to override awards and enterprise agreements. The agreements could have different expiration dates, thereby making it harder to re-collectivise a workplace once an individual regime had been implemented. Once the agreements had been approved they offered organisations protection from industrial action, as similar to collective industrial instruments employees on AWAs could not participate in protected industrial action when their agreements were within their nominal expiry date (in-term). Finally, the agreements could be offered with additional benefits to induce employees to abandon their unions. Employers were, however, unlikely to openly admit a de-unionization strategy. The WRA 1996
recognised the freedom to associate and openly admitting to a de-unionization approach could have contravened this (Peetz 2002, p. 42). Openly advocating a preference for direct-employee relations and circumventing collective negotiations with unions by instead opting for individual agreements was, however, found not to breach the freedom of associations provisions (McCallum 2002).

The third employer motivation Van Barneveld and Nassif (2003, pp. 29-30) identified was the capacity of the AWAs for “reducing labour costs”. The ability to use the agreements to trade-off compensation for non-standard working hours, such as penalty rates, against higher hourly wages or salary packages made the agreements an attractive mechanism for employers who were operating outside of the standard working hours. AWAs had the capacity to offer annualized salary packages with open ended hours provisions as well as the requirement for employees to work ‘reasonable’, undefined, overtime (Van Barneveld & Nassif 2003, p. 30). Some employers abused the inclusion of “preferred hours” provisions in agreements, particularly in lower-paid service sectors. Here vulnerable employees were pressured to “choose” their preferred hours which effectively abolished their entitlement to penalty rates and overtime pay (Elton et al. 2007; Pocock et al. 2008).

The AWAs were also an ideal tool to strengthen managerial prerogative (Bray & Waring 2006, pp. 8-10) so it is not surprising that the agreements were positively viewed by managers (Gollan 2004, p. 121). The available evidence suggests that only limited, if any, bargaining was taking place over AWAs. This can partly be attributed to bargaining power inequality between the parties (Bray & Waring 2006, p. 45; Sheldon & Kohn 2007), which is further reflected in the fact that they were frequently offered as templates on a take-it-or-leave-it basis whereby there was a lack of individualisation in the content of the agreements (Bray & Waring 2006; Hall 2006; Pocock et al. 2008; Sheldon & Junor 2006; Tham 1999; Van Barneveld 2006; Van Barneveld & Nassif 2003; Waring & Burgess 2006). As a result the process for implementing an SIA became one where an employer drafted up a document and the employee accepted it – SIAs were thus concluded through unilateral agreement making rather than bargaining, which illustrates that a distinction between agreement making and bargaining should be made under Australian ER regulatory systems (Bray et al. 2014, pp. 329-330; Gahan & Pekarek 2012).
Scholars have focussed on the content of SIAs, AWAs in particular, to assess how these differed from the other industrial instruments, as well as to infer managements’ rationale for them (Gollan & Hamberger 2003; Mitchell & Fetter 2003; Roan, Bramble & Lafferty 2001). Gollan and Hamberger (2003), however, pointed out that making inferences about the rationale for SIAs on the basis of the content of the agreements can be problematic. Mitchell and Fetter (2003, p. 320) also explained that “the face of the agreements does not necessarily reveal what is going on in practice within the enterprise”. The content of the agreements in isolation can, however, inform the degree of organisational flexibility that management have access to under their industrial instruments (Gollan & Hamberger 2003).

Researchers found that across industries SIAs were used for varying rationales and in differing ways (Bray & Underhill 2009; Peetz & Preston 2007; 2009; Ross & Bamber 2009; Van Barneveld & Nassif 2003). Different outcomes were identified between groups of employees (Wooden 1999), where in particular a distinction should be made between managerial and non-managerial employees (Peetz 2004, p. 1).

1.2.3 The impact of the Work Choices reforms on SIAs

Before 2005 the Howard government had already attempted unsuccessfully to ease the procedural restraints on AWAs (Cooper & Ellem 2008; Riley 2002; Waring & Burgess 2006), but it wasn’t until 2005 when it won a majority in the Senate that it could implement these reforms. The government subsequently rushed the Workplace Relations Amendment (Work Choices) Act 2005 (Cth) through parliament. The provisions of the Act widened the scope of AWAs and had drastic implications for the way in which AWAs operated (Fetter 2006; Van Barneveld 2006). For lower-paid employees and those with weak bargaining power the detrimental outcomes of the AWAs increased. AWAs after the Work Choices reforms were bearing increasing levels of resemblance to the earlier WA state WPAs (Zulsdorf 2006).

The Work Choices reforms had the clear objective of making AWAs the preferred and central industrial instrument of the ER regulatory system (Fetter 2006; Hall 2006; Waring & Burgess 2006). Peetz and Preston (2007, p. 2) argued that Work Choices was “privileging individual contracts (AWAs) over collective agreements (CAs), for example by enabling them to override CAs at any time or place”. Cooper and Ellem (2011)
explained that the government effectively adopted an interventionist approach to encourage individual over collective agreement making under the guise of deregulation and decentralization of ER.

*Work Choices* substantially enhanced managerial prerogative in relation to AWAs (Van Barneveld 2006). The reforms abolished the ‘no-disadvantage test’ safety net mechanism which was replaced by five statutory minimum conditions (Fair Pay and Conditions Standard). They further formally separated employees on AWAs from the award system by preventing employees on expired AWAs from moving back to collective instruments (Fetter 2006). The reforms also clarified the practice of making AWAs a pre-condition of employment. The content of both collective and individual industrial instruments was further prescribed and restricted, which meant that more matters were left to management’s discretion. The legislation also expanded the coverage of the federal system, and thereby increased the workforce population that could be offered AWAs (Hall 2006; Isaac 2007; McCallum 2007; Stewart 2006).

The Howard government received considerable public backlash as a result of the *Work Choices* reforms, and in a last minute attempt before the 2007 election tried to address some of the concerns in the community in relation to the unfairly perceived labour market outcomes for lower paid workers on AWAs by introducing the ‘fairness test’ (Sutherland & Riley 2008).

The changes brought about by the *Work Choices* amendments were broader than just with respect to SIAs; they included implications for union activities, unfair dismissals, the role of the tribunal, and the constitutional basis for labour legislation. For the purpose of this thesis these aspects are not further discussed.² What was evident, however, was that from Labor’s perspective the *Work Choices* reforms were unacceptable and Labor therefore went to the 2007 election with a policy platform for an overhaul of the federal ER regulatory regime, which also affected the continued existence of SIAs (Hall 2008).

² For detailed analyses of the amendments and their implications see Barnes 2007; Charlesworth & Macdonald 2007; Cooper & Ellem 2011; Cooney 2006; Cooney, Howe & Murray 2006; Ellem et al. 2005; Elton et al. 2007; Fenwick 2006; Fetter 2006; Hall 2006; Murray 2006; Peetz 2007; Pocock et al. 2008; Sheldon & Junor 2006; Sheldon & Kohn 2007; Zulsdorf 2006
1.2.4 Phasing out SIAs in the transitional period – From AWAs to ITEAs

In 2007 there was a change of federal government which had direct implications for the ER regulatory system. The new Rudd Labor government proclaimed a philosophy of ER based on collective bargaining as fairest (Rudd & Gillard 2007). Therefore one of the key election promises was the removal of SIAs from the ER regulatory system (Cooper 2009). The *Fair Work* legislation and the subsequent implications for SIAs are considered in the next sub-section, however the transitional legislation – *The Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* (Cth) – that the Rudd government enacted had significant implication for the prolonging of SIAs and therefore needs to be considered. The Rudd Labor government also reinstated the ‘no-disadvantage test’, which replaced the fairness test, when it was just elected into office to provide an even stronger safety net for the SIAs before these were eventually phased out (Sutherland 2009).

In the lead up to the date when no more SIAs could be concluded there was a rapid increase in the number of SIAs registered in certain industries, including the mining industry. There was, however, a remarkable resemblance between what happened to the take-up of the WA state agreements, WPAs, and the AWAs after their safety nets were strengthened. Similar to the WPAs the uptake of the AWAs declined when the safety net procedures were tightened (Fair Work Act Review 2012; Todd, Caspersz & Sutherland 2006). The Fair Work Act Review Panel pointed out that the uptake of the AWAs declined in the lower-paid service sector areas which used the agreements to minimise labour cost and reduce terms and conditions of employment. On the other hand the Panel found that there was a surge in the uptake of the agreements in the months before they became unavailable in other industries, such as the mining industry (Fair Work Act Review 2012, pp. 122-123).

In Opposition Labor had already flagged that there was no place for SIAs in its ER policy agenda (Waring & Burgess 2006, p. 77). This was reflected in the party's ‘*Forward with Fairness*’ policy document that it took to the election (Rudd & Gillard 2007). The original proposal was, however, severely watered down due to heavy lobbying from employer groups (Hall 2008, p. 374; Hearn Mackinnon 2008). The Rudd Labor government opted to retain a substantial number of the changes brought about by *Work Choices* such as the national system of ER, statutory minimum terms and
conditions, and a reduced role for the industrial relations tribunal. It, however, remained committed to abolishing SIAs (Hall 2008). This was much to the dislike of the mining industry, who through the Australian Mines and Metals Association (AMMA) lobbied and campaigned heavily to preserve SIAs (Hearn Mackinnon 2008, pp. 470-472).

Hall (2008, p. 375) suggests that through its lobbying activities the mining industry was able to influence some of the transitional provisions in relation to the SIAs: “Rudd and Gillard had been negotiating with employer groups, and the Western Australian mining companies in particular, on transitional arrangements for AWAs and had become acutely aware of their concerns” (emphasis added). As a result, as will be shown later on in the thesis, the transitional period turned out to be critical for managers who wished to retain SIA regimes as the legislative provisions offered them additional strategic choices.

When analysing managements’ strategic choices in relation to the removal of the SIAs from the regulatory regime, it is worthwhile noting that during the transitional period different instruments stopped being available at different stages (Sutherland & Riley 2010, p. 281), which is shown in Figure 1.1.

**Figure 1.1 Timeline on the availability of the various industrial instruments**

AWAs could be renewed before 28 March 2008 for a period up to five years. In the transitional period there was the option for those employers that had employed at least a minimum of one employee on an AWA prior to 1 December 2007 to continue to
use SIAs in the form of Individual Transitional Employee Agreements (ITEAs). The ITEAs were AWAs with a shorter expiration date and subjected to the stronger safety net test (Sutherland 2009, pp. 299-301). The fact that the option of ITEAs existed, albeit for a limited time, provided management with additional strategic choices in terms of deciding what to do with their SIA covered workforces. ITEAs were available for employers from 28 March 2008 till 31 December 2009.

With respect to the collective instruments, on the other hand, after 30 June 2009 an end was made to the distinction between union (UCA) and non-union (ECA) collective agreements. Also Work Choices style greenfield agreements ceased to exist. After 1 July 2009 the majority of the Fair Work Act 2009 provisions, and its good faith enterprise bargaining system, became operational albeit with the exception of the new safety net provisions dealing with the National Employment Standards (NES) and the modern awards. These didn’t become operational until 1 January 2010 (Stewart 2012, p. 14).

Given the changing cut off dates for the various instruments as well as the phased-in introduction of the approval systems, management had various choices, including the choice to opt to remain on individual instruments or switch to collective ones, that they could pursue in relation to their SIA covered employees.

1.2.5 The removal of SIAs – The Fair Work Act 2009 regime

The Fair Work (FW) Act 2009 states under its objectives that the Act is: “ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system” (FWA s3(c)). When the Act became fully operational on 1 January 2010 an official end was made to the option to conclude new SIAs under the federal Australian ER regulatory system (Sutherland & Riley 2010).

Contrary to the previous Act which had prioritised individual agreements, the FW Act promotes enterprise bargaining at the collective level (Creighton 2011) and is based on the principles of collective ‘good faith bargaining’.
Besides the changes the FW Act made to industrial agreement making, the new regime was part of a broader regulatory overhaul which included amongst other matters an award modernisation process, the broadening of the minimum statutory entitlements in the form of the NES, a further federalization of the ER regulatory system\(^3\), and changes to the unfair dismissal legislation.

Enterprise agreements (EAs) are the main industrial instrument under the FW regime. The Act no longer distinguishes explicitly between union and non-union collective agreements, rather EAs can be negotiated with or without unions. The representational rights, however, provide increased ease for unions to be involved in the negotiations (Cooper & Ellem 2009). The EAs are also subjected to different safety net provision than the SIAs and ECAs were. In order for EAs to be approved, agreements need to pass the better-off-overall-test which assess whether employees are better off overall in comparison to the relevant modern award (FWA s193 (1)).

The FW ER regime has carved out a more prominent role for unions in the making of EAs through the employee representational rights provisions (Creighton 2011). The representational rights section (FWA 176 (1)(B)) provides unions with a greater capacity to represent their members and be a ‘de-facto’ bargaining representative. Unless an employee who is a member of a union actively appoints another person (or themselves) as their bargaining representative, the union becomes their default representative when EAs are concluded.

In relation to the SIAs the FW regime did not spell the immediate end of these agreements. There was no full sunset provision in relation to the AWAs and ITEAs. As these agreements only have a nominal expiry date, this means that they can remain in place after expiry until either party decides to terminate the agreement. So although there is no option to conclude new SIAs under the FW regime, some old SIAs can remain operational for an extended period.

What affects the lifespan of the SIAs, however, are some of the provisions in the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth), for

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\(^{3}\) The increased federalization of the ER regulatory systems has reduced the capacity of employers to leapfrog between the state and federal system. The leapfrogging that took place when the WPAs where curtailed is thus no longer a feasible alternative for constitutional corporations.
example through the conditional termination provisions (Sch 3 item 18(1)), which can remove (non-expired) SIAs when new EAs are concluded.

The transitional provisions also affect the pre-FW Act collective instruments (especially the ECAs) that replaced the SIAs as well. Stewart (2011, pp. 152-153) explains that “old collective agreements can also be replaced at any time by a new enterprise agreement under the FW Act, regardless of whether their nominal expiry date has passed (Sch 3 item 30(20), Sch 3A item 44(1)). But until that date, no protected industrial action can be taken in support of the new agreement (Sch 13 item 4)“.

Although SIAs don’t exist under the FW regime, there are, however, individual flexibility agreements (IFAs) under the Act. IFAs are mandatory enterprise flexibility arrangements that are included in both the awards (FWA s144(1)) and enterprise agreements (EAs) (FWA s202(1)(a)). The IFAs are, however, fundamentally different from the SIAs. The IFAs’ scope is more limited, they are unregistered and not approved by a governmental agency. Either party can terminate the agreement with 28 days’ notice (FWA s203(6)(a)), and in the case of IFAs which are made under the award employees are still entitled to participate in protected industrial action. Thus the IFAs cannot be seen as a direct replacement for the SIAs, since they do not provide employers with similar levels of industrial certainty. Employer attitudes towards – and use of – the IFAs would seem to confirm that these are not regarded as the ‘natural’ successor of SIAs (Sheldon & Thornthwaite 2013, pp. 390-391; Todd 2011, p. 361).

After the enactment of the FW ER regulatory regime in 2009 further legislative changes to the ER regulatory regime have taken place in 2013 with the introduction of the Fair Work Amendment Act 2013 (McCrystal 2014). These further legislative changes, however, did not affect the findings as the amendments were not in relation to SIAs, the conclusion of EAs, or operation of the IFAs.

With the election of a conservative federal government in 2013 legislative change to the ER regulatory system is once again on the public agenda, with in particular a Productivity Commission enquiry into the workplace relations framework currently being undertaken (Hockey 2014). While the Abbott Coalition Government has so far taken a cautious approach towards ER reform (Thornthwaite & Sheldon 2014), particular interest groups in society are still pushing for reinstatement of the SIAs.
1.3 Continued Employer Lobbying for SIAs

For this research, because of its focus on the WA mining industry, it is particularly important to note the outspoken position that the Australian Mines and Metals Association (AMMA) has taken with respect to SIAs and the FW regime. Prior to the removal of the SIAs it had been a vocal advocate of these agreements (Todd 2010, p. 313). AMMA has been arguing that SIAs were an essential industrial instrument for the (WA) mining industry and has continued lobbying for their reinstatement.

There is some recognition in the existing literature that employers and their associations haven’t welcomed, nor embraced, the FW regime. Moreover, some have actively argued and lobbied for reinstatement of SIAs (Sheldon & Thornthwaite 2013; Thornthwaite & Sheldon 2014; Todd 2010; 2011; 2012). Todd (2012, p. 352) explains that “even though only a small percentage of employees were covered by AWAs historically, the clamour for statutory individual agreements is not surprising given the significance of the statutory individual agreement as a weapon in the employers’ bargaining armoury when negotiating with unions.”

Although AMMA may have been the most vocal of the employer groups in arguing for reinstatement of the SIAs, it wasn’t the only one. For example, the submissions of the various employer associations to the Fair Work Act Review Panel reveal that the Business Council of Australia (BCA) was advocating for a re-shaping of the IFAs into de-facto AWAs (BCA 2012, p. 46), while the Ai Group (2012, p. 16) argued that “statutory individual agreements should be reintroduced and become another type of ‘enterprise agreement’.” Furthermore, prominent individuals within the Liberal party were also arguing that SIAs should be part of the ER regulatory regime (Reith 2011).

The continued lobbying from certain employers and their associations for the reinstatement of SIAs as well as the vocal rejection of the FW regime raises questions as to what happened when the option to conclude SIAs ceased to exist. Has it affected the organisations’ preferred workplace relations regimes? Did organisations under the FW Act have to engage with unions to conclude agreements where before they were excluded? Thus far, however, limited empirical evidence has been collected on the implications of the removal of SIAs from the ER regulatory system (Workplace Express 2011), let alone the implications for those organisations and their management that
used them, nor how they have responded to the demise of this preferred industrial instrument.

1.4 The Significance of SIAs in the WA Mining Industry

SIAs have been an important industrial instrument for the mining industry and it was one of the heaviest users of these agreements. The industry represents “around 1 per cent to 2 per cent of total employment in the Australian economy, but 7 per cent to 14 per cent of AWAs and ITEAs registered were for employees in the mining industry” (Fair Work Act Review 2012, p. 119). The WA mining industry was especially a substantial user of WPAs, AWAs, as well as ITEAS, and these SIAs have been an instrumental part of the industry’s preferred workplace relations regimes (AMMA 2007a; Fair Employment Advocate 2007). Table 1.1 highlights the industry’s own estimates on the take-up of SIAs in the Australian and WA mining industry.

**Table 1.1 The mining industry’s own estimates on uptake of SIAs**

<table>
<thead>
<tr>
<th>Estimated use of SIAs in the Australian Mining Industry</th>
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<tbody>
<tr>
<td>“As at June 2005, 33,7000 employees (or 60 per cent of employees covered by federal agreements) in the mining industry were on AWAs.” (AMMA 2005b, p. 5)</td>
</tr>
<tr>
<td>“As at June 2005 approximately 33,000 employees (or 60%) in the mining were on AWAs” (AMMA 2005a, p. 5)</td>
</tr>
<tr>
<td>“A review of the federal resource sector agreements as at 30 March 2006 found that 62% of these agreements were AWAs.” (AMMA 2007c, p. 8)</td>
</tr>
<tr>
<td>“A review of resources sector agreements lodged in the 12 months to 31 May 2007 revealed that 73.5 per cent resources sector employee were employed under an AWA” (AMMA 2008, p. 11)</td>
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<table>
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<th>Estimated use of SIAs in the Western Australian Mining industry</th>
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<tbody>
<tr>
<td>“By the time they were abolished in 2002 approximately 85 per cent of employees in the Western Australian resources sector were covered by WPAs.” (AMMA 2007a, p. 5)</td>
</tr>
<tr>
<td>“AWAs are also the most popular choice of federal agreements with 62 percent of all resources sector employees who are covered by a federal agreement employed under an AWA (this figure is in the order of 80 percent in the metalliferous mining in Western Australia)” (AMMA 2007a, p. 5)</td>
</tr>
<tr>
<td>“…80% of the resource sector in WA [are] on Australian Workplace Agreements…” (WorkplaceInfo 2007)</td>
</tr>
</tbody>
</table>

According to one prominent CEO in the WA mining sector – also involved with a number of industry organisations – in 2007, at around the time the agreements were being abolished, around 90 per cent of the employees in the WA mining industry were covered by SIAs (Scott 2007).
The table reveals that the industry itself claimed that the take-up of SIAs was very significant. A problem with the SIAs has, however, always been the lack of reliable figures on their uptake. Unpublished ABS figures shown in Table 1.2 would suggest that the industry’s own estimates are somewhat overstated. The issue with the exact figures should, however, not detract from the fundamental point that across the industry there was extensive use of SIAs.

| Table 1.2 Unpublished ABS DATA - Proportion of non-managerial employees on AWAs in the WA mining industry |
|---------------------------------------------------------------|---------------------------------------------------------------|
| Proportion of non-managerial employees on AWAs in the WA mining industry | 2004 | 2006 |
| 29.4% | 28.7% |

Besides the high uptake of the agreements, another reason why the use of SIAs in the mining industry is of interest relates to the distinct ways in which management used the agreements throughout the industry. The industry considered SIAs critical for its operations (Ellem 2004; Hearn Mackinnon 2007; Tracey 2003). The agreements were an important management tool to introduce workplace reforms (Moore & Gardner 2004) which in a number of instances had a significant impact on the way the organisations operated (Fetter 2002; Hearn Mackinnon 2007). It has also been documented that de-unionisation was one of the rationale why management in the industry used the agreements (Cooper & Ellem 2011; Cooper et al. 2009; Ellem 2002; 2005; 2003b; 2004; 2006a; 2006b; Fetter 2002; Hearn Mackinnon 2007; 2009; Peetz 2002; 2006; Peetz & Murray 2005; Timo 1997; 1998).

The mining organisations have been amongst the most outspoken defenders of the agreements, and have continued to advocate their reinstatement. The political influence of the WA mining industry in affecting policy makers cannot be ignored, which is reflected by the lobbying of the organisations themselves (for example ABC News 2007a; 2007d) as well as through the industry’s two high profile employer associations (for example Knott 2007) – AMMA and the Chamber of Minerals and Energy of Western Australia (CME), whereby the former is more active in relation to workplace relations matters.
The mining industry expressed strong concerns about the removal of the SIAs from the Australian ER regulatory system as it alleged that it would jeopardise the economic future of the industry. This contention has been extensively reported in the press\(^4\), whereby the removal of SIAs was once described akin to “economic vandalism” (WorkplaceInfo 2007). This widespread media coverage is, given the economic importance of the industry for the Western Australian and Australian economies, unsurprising (Battellino 2010; Department of Mines and Petroleum 2013; Goodman & Worth 2008; Ye 2008). The industry expressed in particular concerns about the prospect of having to negotiate with unions for new industrial agreements, including the fear across the industry of increased exposure to industrial action (Hearn Mackinnon 2008, p. 470).

### 1.5 Research Question

The purpose of this research is to investigate what happened in the WA mining industry when the SIAs were removed. This raises numerous questions such as: To what extent was the economic future of the industry jeopardised by the removal of SIAs? Did organisations have to engage with unions to negotiate new industrial agreements? Were the industry’s preferred workplace relations models threatened by the regulatory changes? Or did the industry adapt and move on?

Theoretical discussions in previous research on the use of SIAs has predominantly revolved around individualism versus collectivism and the extent to which SIA regimes were reflective of ‘substantial’ and/or ‘procedural’ forms of individualism (Peetz 2006; Van Barneveld 2004). Only limited evidence of actual substantial individualisation of the SIAs was ever found (Van Barneveld & Nassif 2003, p. 27). What has, however, been observed was the importance of managerial choices with respect to the uptake of the SIAs (Cooper & Ellem 2008; Ellem 2005; Fetter 2002; Gollan 2004; Van Barneveld & Nassif 2003). The agreements had the capacity to enhance internal over external regulation (Buchanan & Callus 1993; Ellem 2006a) thereby increasing managerial prerogative (Bray & Waring 2006). This highlights the centrality of management and their decisions with respect to SIAs in organisations.

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Although in some cases the decision to use the SIAs was the result of pressure on management from other actors, for example government organisations (Van Barneveld 2009), there is ample evidence to suggest that their utilisation in the majority of workplaces can be directly attributed to managerial decisions (Bray & Underhill 2009; Bray & Waring 2006; Briggs & Cooper 2006; Peetz 2002; 2007; Peetz & Preston 2009; Van Barneveld 2006; Van Barneveld & Nassif 2003).

Just as management’s decisions were critical in the uptake of SIAs, likewise when the SIAs became unavailable management in the mining industry again were faced with a number of different workplace relations choices that affected their organisations. Management choices are central in this thesis since these are critical in terms of understanding the implications of the regulatory changes for their workplace relations models as well as what the consequences for the daily operations of organisations have been. The central research question in this thesis is therefore:

“What strategic choices did management of organisations operating in the Western Australian (WA) mining industry that used statutory individual agreements (SIAs) make in response to the removal of these agreements from the federal employment relations regulatory system, why were these particular choices made, and how have these choices as well as the regulatory changes in relation to the removal of the SIAs affected their organisations?”

1.6 Outline of the Thesis

The outline of this thesis is as follows. The second chapter sets out the theoretical framework that was used to shape the research and subsequently analyse the findings of this research. This research relies on complementary theories from ER and law, reflecting the multidisciplinary character of ER scholarship (Kochan 1998). The third chapter discusses the context of employment relations in the WA mining industry, and so provides the background to understanding the strategic choices management have made in response to the removal of the SIAs. The fourth chapter explains the methodology used in this research. Here the ontological and epistemological positions of the research are discussed, the qualitative industry case study approach is outlined and justified, and the data collection process and data analyses are presented.
The findings of the thesis are presented in three chapters. Chapter five deals with the rationale for the adoption of SIAs in the researched organisations from the WA mining industry, how these organisations used them, and what they were able to achieve by their utilisation. It shows that the SIAs were instrumental for organisations across the industry in establishing the industry’s preferred ER/HR arrangements. Chapter six describes the experiences of the management of these organisations in the transitional period. It discusses the strategic choices that were made under this temporary regulatory regime and the subsequent consequences of the choices in this period for their workplace relations. The chapter reveals the critical role that the transitional period as well as the transitional legislation played in terms of the choices that management in the WA mining industry have been making in relation to their SIA covered workforces. Chapter seven explores life after SIAs under the *Fair Work Act 2009*. It presents managements’ strategic choices in response to the removal of the SIAs. It analyses the changes in the content of industrial agreements. It also details the consequences of the SIA removal for the industrial agreement making of organisations in the WA mining industry.

Chapter eight concludes the thesis by discussing the findings and relating these to the theory. Implications for public policy and future research are presented, whilst there is also a reflection on the limitations of this research.
Chapter 2 - Literature Review and Building a Theoretical Framework

Introduction

The thesis will use three compatible and complementary theoretical frameworks and an additional analytical construct to determine what the consequences of the removal of SIAs were and whether the collectively based Fair Work (FW) employment relations regulatory regime is yielding substantially different labour-management relations or agreement-making outcomes. These frameworks are derived from ER and law, which is in line with the multidisciplinary character of ER scholarship (Kochan 1998).

The first part of the chapter sets out the strategic choice framework, which is the main ‘lens’ for the research. Given the centrality of management choice in this research, and the important role of the external environment in invoking and influencing these choices it provides a useful starting point. The second part of the chapter deals with the strategic negotiations framework that Walton, Cutcher-Gershenfeld and McKersie (1994) developed. The strategic negotiations framework allows for a more detailed investigation into how strategic choices play out in agreement making, as the focus of the research is on industrial agreement making. The framework also defines the outcomes of agreement making which permits comparisons between outcomes of industrial agreement making in the WA mining industry before and after the legislative changes.

The strategic choice and strategic negotiations frameworks both acknowledge the importance of the regulatory regime in which actors make their strategic choices, but neither addresses in detail how legal regulation shapes the environment in which actors operate. Therefore in the third part of this chapter Lessig’s (1998) New Chicago School (NCS) regulation theory is introduced. This framework helps to conceptualise how law, and the changes therein, affect the regulatory constraints which restrict an actor’s strategic choices. Similarly Hancher and Moran’s (1989) construct of regulatory space enables the exploration of power relations between regulators and regulatees, and it brings to the forefront the power relations between them.

This chapter concludes by reiterating the linkages and compatibility of the three frameworks and the additional analytical construct and presents an approach that
enables the circumstances surrounding the removal of the SIAs to be better understood than would be possible through one framework alone.

2.1 Managerial Strategic Choice in Changing Regulatory Environments

The core premise underpinning the strategic choice framework is that the outcomes achieved under a regulatory regime are the result of a dynamic and complex relationship between actors’ ability to make choices and the environment which constrains these choices (Kochan, McKersie & Cappelli 1984; Kochan, Katz & McKersie 1986).

2.1.1 What are strategic choices?

What constitutes a strategic choice? When is a choice strategic? To what extent is an outcome the result of a strategic choice or when is it merely the result of an undeliberate action taken by a party? The existing literature is used to provide a clear definition of what exactly constitutes a strategic choice and also what doesn’t.

The concept of strategic choice was originally derived from economics and organisational research and was adopted by ER scholars in the 1980s. Strategic choice is an acknowledgement of the influence decision makers have on organisational processes and outcomes (Kochan, McKersie & Cappelli 1984, p. 22). An understanding of strategic choices helps to explain the variation found between organisations and shifted the focus from organisational structures towards the influence of management (Child 1972, p. 16). There is, however, also a recognition that the choices of these decision makers are constrained by the external environments in which the organisations are operating.

Management is not necessarily a homogenous group and therefore Child (1972, p. 13) preferred to refer to the strategic choices of the dominant coalition within management rather than the strategic choices of management. This acknowledges that there can be alternative views within the managerial ranks; it also explains why the decision making capabilities can differ within certain parts and/or divisions of an organisation. The dominant coalition is subject to changeability and its configuration can change depending on politics or matters under consideration (Child 1972, pp. 14, 43). This thesis thus recognises that when strategic choices of management are
discussed that these are actually the strategic choices made by the dominant coalition within management of the respective organisations.

An issue with strategic choice is the ambiguity surrounding its definition. That strategic choices haven’t been adequately defined (Strauss 1988) has also been a criticism of those authors who have been using the concept in their research (Child 1972; Ichniowski et al. 1996; Poole 1986; Verma 1985). This includes those that utilised it within the context of the strategic choice framework (Kochan, Katz & McKersie 1986; Kochan, McKersie & Cappelli 1984).

A problem with strategic choice is that it and strategy at times are used as if they are interchangeable (Bacon 2008; Lewin 1987; Lewin & Sherer 1993; Sisson & Marginson 2003), but there is a difference between strategy and strategic choice. So a clear distinction has to be made between them (Boxall & Haynes 1997, p. 569). Strategy relates to an organisation developing a set of policies, mission statements, goals and the like, whereas strategic choice is about those decisions that have a strategic dimension to them and impact the relationships between the organisation and the other actors. Strategies as formulated by organisations certainly can influence strategic choices. They are, however, far broader and can cover a range of organisational aspects (Whittington 1993). Strategy is more often about managerial vision than about practical policy and doesn’t always specify an actual course of action (Nelson 1991, p. 67). Quite often in an organisation’s strategy any reference to industrial relations and human resource management is lacking (Purcell 1987, p. 535).

A strategic choice on the other hand is “the process whereby power-holders within organisations decide upon courses of strategic action” (Child 1997, p. 45). These choices can be made in response to internal or external matters, and be focused on the internal or external networks. The choices can be pro-active or reactive in nature (Child 1997, pp. 45-46). Moreover, alternatives have to exist before a decision can be considered a strategic choice at all, otherwise the mere notion of choice is ‘hollow’ (Kochan, McKersie & Cappelli 1984, pp. 21-22). A choice also has to be a deliberate decision by an actor before it can be considered a strategic choice (Verma 1990).

The definition of strategic choice for ER research (Kochan, McKersie & Cappelli 1984, pp. 21-22) places more emphasis on outcomes rather than process, which contrasts
with organisational behaviour scholars like Child (1972; 1997). Kochan, McKersie and Cappelli (1984, pp. 21-22) define strategic employment relations choices as those that are “within the set of decisions over which the parties have discretion” and that “alter the party’s role or relationship with other actors in the industrial relations system”. Although changes in both ‘role’ and ‘relationship’ should be taken into consideration, the emphasis should be placed on changes to the ‘relationship’ as changes in ‘role’ tend to have a greater impact and therefore occur less frequently (O’Leary & Sheldon 2008, p. 225).

The actors’ choices do not have to play-out as intended. Strategic choices can “generate unintended consequences even where there are no apparent weaknesses in implementation” (O’Leary & Sheldon 2008, p. 223). Neither do they have to impact directly or immediately, as the effects of a decision may play-out over a longer period of time (Kochan, McKersie & Cappelli 1984, p. 22). Consequently it is difficult matching these strategic workplace decisions and their effects with the strategy an organisation has formulated (Bacon 2008, p. 252). Such discrepancies can be caused by frictions, conflict and contradictions (Katz, Kochan & McKersie 1990) and reflects the dynamic nature of these choices and the workplace context in which they are made, which make them worth investigating.

Strategic choices are not just restricted to managerial decisions (Kitay 1997, p. 10), although these are the main focus of this research, they are made by all actors in the ER system – unions, employers, governments. The various decisions these actors make will affect each other (Boxall & Haynes 1997; Campling & Michelson 1998; Kochan 1984; Kochan, Katz & McKersie 1986; McKersie 2001; Verma 1990). O’Leary and Sheldon (2008, p. 239) provide an elegant description of the interplay of strategic choices: “Strategic choices can work in mysterious ways and not only through poor implementation. When one party chooses strategically in ways that threaten another party, the outcome remains necessarily indeterminate. Rather than strategic choices making history, it is the struggles between strategic choices, varying capacities for planning, leading, anticipating, responding, organising and communication that help us understand outcomes relative to intentions. Context matters but facilitates rather than determines”.

Ideology affects and constrains the strategic choices that dominant coalitions in organisations make, as ideology limits the number of viable alternative strategic choices that can be pursued (Child 1997, pp. 50-52). Child (1997, pp. 50-52) provides three examples of how strategic choices are restrained by ideology. Firstly, the number of strategic choices to choose from can be reduced by external pressures and expectations. When there is a dominant ideology in an industry adhered to by competitors, shareholders and other stakeholders this can limit the number of viable alternatives. Secondly, ideology can shape intra-organisational political processes and tend to minimise those voices and alternatives that are not in line with the dominant coalition. Thirdly, ideology can lead to informational deficiencies whereby decision makers willingly neglect or dismiss information contradicting their beliefs. Ideology thus plays an important role in strategic decision making as it limits the number of viable alternatives the dominant coalition can pursue.

The external environment also limits and shapes the strategic choices that the dominant coalition(s) can pursue. According to Child (1997, p. 53) there is a dynamic relationship between organisations and their environment. While the external environment constrains the choices of an actor, at the same time actors have the ability to influence and alter the environments in which they are operating (Child 1997, p. 54). Some organisations, for example, have the ability to choose the environments in which they are operating and hence can opt to ‘enter’ or ‘exit’ environments according to their organisational fit.

Katz, Kochan and McKersie (1990) strongly reject any accounts which overemphasize the influence of the external environment as that would result in a deterministic paradigm. It is, however, not a mere dichotomy between voluntarism and determinism. A more realistic assertion of strategic choice acknowledges the complex relationship that exists between an actor and its environment (Whittington 1988, pp. 532-533). Verma (1990, p. 176) neatly summarizes the core premise of strategic choice theorists, namely that “firms facing the same external conditions may choose to respond very differently, that is, they have a choice of a particular strategy for adoption from a menu of feasible strategies”. This research takes a similar non-deterministic view on the relations between an actor and its external environment.
2.1.2 From systems theory to strategic choice

Kochan, McKersie and Cappelli (1984) introduced strategic choice to ER theory in order to improve the then dominant systems approach (Dunlop 1958; Kerr et al. 1960), which according to them did not adequately address the changes that were taking place at the beginning of the 1980s (Bamber, Lansbury & Wailes 2004, p. 20; Black 2005, p. 1139). In particular, the increased managerial assertiveness in the United States industrial relations system context wasn’t adequately captured by the existing systems models (Kochan, McKersie & Cappelli 1984, p. 16; Roomkin & Juris 1990, pp. 107-108). The strategic choice literature further made a number of critical corrections to systems theory, including a revision of the assumption of a shared ideology amongst the actors that kept IR systems stable over time (Hollinshead, Nicholls & Tailby 2003; Kochan, Katz & McKersie 1986; Kochan, McKersie & Cappelli 1984; Müller-Jentsch 2004; Sisson & Marginson 2003).

Another shortcoming of the systems theory was that it was too static and failed to address how and why changes were taking place (Hollinshead, Nicholls & Tailby 2003, p. 22; Kochan, McKersie & Cappelli 1984, p. 16; Sisson & Marginson 2003, p. 159). In systems theory unions, governmental agencies, and management are usually given equal weight when it comes to shaping the outcomes, or occasionally a greater influence was attributed to unions and governments (Sisson & Marginson 2003, p. 158). From the 1980s onwards, however, management started retaking the initiative on industrial relations matters and systems theory failed to adequately address this development. In Australia, as well as in other countries, this era was marked by a decline in unionisation, the rise of neo-liberalism and changing managerial values (Fox 1985; Harvey 2005; Kochan, Katz & McKersie 1986; Kochan, McKersie & Cappelli 1984). Kochan, McKersie and Cappelli (1984, p. 20) explained that one of their objectives was to develop a theoretical framework which was able to explain the shift from reactivity to pro-activeness in managerial ER decision making.

2.1.3 The strategic choice framework

The strategic choice framework (Figure 2.1) reveals the interactions between the environment and the strategic choices of the actors. These are filtered and constrained by their ideological values, the institutional settings, and are continuously evolving and shaping the employment relations processes and outcomes (Kochan, Katz & McKersie
1986, pp. 11-12). Similar to the systems theory, the different variables in the external environment play an important role in shaping and limiting the potential strategic choices the actors can choose from. Where systems theory argues that the actors share an ideology that sustains an ER system, the strategic choice framework suggests that the actors can and are likely to have divergent interests which they pursue, and thereby disrupt an existing system. The strategic choice scholars thus argue that there isn’t necessarily a shared ideology amongst the parties, which helps to explain why ER systems aren’t necessarily stable over time.

**Figure 2.1 General framework for analysing industrial relations issues**

Besides a strategic element Kochan, Katz and McKersie (1986, pp. 15-20) added a three tier institutional structure of firm-level industrial relations to address what they considered was a too narrow focus on collective bargaining and personnel policy. In the middle of Table 2.1 is the traditional tier of collective bargaining and personnel policy, above it is the top-tier of long-term strategy and policy making, and below is the bottom-tier of workplace and individual/organisation relationships. The different actors all operate at the three different tiers and develop and execute strategic choices accordingly. The different levels are also interlinked and can affect and influence each other (Kitay 1997, p. 11). Cutcher-Gershenfeld and Kochan (2004, p. 8) put it more strongly and argued that changes in collective bargaining and the strategic level will impact workplace relations. Hence a key problem for organisations can be that the
different levels of ER activities are not aligned with each other thereby causing frictions, conflicts or contradictions (Kochan, Katz & McKersie 1986, p. 18).

**Table 2.1 Three levels of industrial relations activities**

<table>
<thead>
<tr>
<th>Level</th>
<th>Employers</th>
<th>Unions</th>
<th>Government</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Collective Bargaining and Personnel Policy</strong></td>
<td>Personnel Policies, Negotiations Strategies</td>
<td>Collective Bargaining Strategies</td>
<td>Labour Law and Administration</td>
</tr>
</tbody>
</table>

Source: Kochan, Katz and McKersie (1986, p. 17)

In relation to the three tier framework of firm level industrial relations (Table 2.1) Strauss (1988) argued that while it is one of the valuable contributions of the strategic choice framework that there is ‘fuzziness’ as to how the different levels are linked. Despite the fact that the three levels are distinctly different, there is no strict demarcation where one starts and the other ends, potentially creating confusion about at what level choices play out, especially since the three different levels interact and influence each other. Where the actors’ choices across these levels are not aligned this can be the cause for internal struggles and conflict. For this research the lack of a strict separation between levels should pose no critical issues as all three levels will be taken into the scope of this research, nonetheless it is recognised that this fuzziness remains.

The capacity of actors other than management – employees, unions and governments – to affect organisational strategy and outcomes at the top-tier of the institutional framework has also been questioned as frequently, assisted by legal frameworks, this tends to be largely at managements’ discretion (Block 1990, pp. 32-33). There is, however, evidence to suggest that unions (Hunter 1998), work councils (Frege 2002), or a government (Chapman 1998) can in certain circumstances impact directly on business strategies and strategic choices. Thus whilst there might be a limit to these actors’ capacity to influence strategic choices at the top tier level, their capacity to do so is dependent on the particular circumstances rather than being ruled out entirely. Whereby engaging in cooperative labour-management relations at the top-tier strategy level may actually benefit organisational performance (McKersie 2001).
The strategic choice framework has been subjected to varying forms of criticism. Bacon (2008, p. 249), for instance, points out that the framework has been criticised for not being compatible with the radicalist perspective as it fails to address class struggles adequately (Edwards 2003; Hyman 1987). Since this research, in line with Australian ER for decades, adopts a pluralistic perspective this is in itself not a critical issue.

Early critics further questioned the framework’s value as it had been rarely used to analyse employment relations in countries other than the UK and US or in comparative research (Lipset 1988, p. 448; Müller-Jentsch 2004, p. 23). The usefulness of the framework in other contexts has, however, been demonstrated. Chaykowski and Verma (1992), for example, successfully applied the framework in the Canadian context, whilst Locke, Kochan and Piore (1995) demonstrated that the strategic choice framework can be a starting point for international comparative research. The work of Kitay and Lansbury (1997) further demonstrates the framework’s value for industry comparisons in the Australian context. Also for the WA mining industry it has been demonstrated that the strategic choice framework can be a useful lens to analyse managerial strategic choices (Swain 1995). The reviews of the latter highlighted, however, the need for coherent definitions and rich historical descriptions of the context in which research is situated (Dabscheck 1997; Fells 1995).

The capacity to operationalise the strategic choice framework has also been questioned, especially its predictive capacity (Aronowitz 1988; Bacon 2008; Lewin 1987; Strauss 1988). Lewin (1987) argued that the validity of the concept of strategic choice could be questioned because those who used the strategic choice framework initially failed to formulate hypotheses, operationalize them into variables, and test linkages between environmental variables and strategic choices. Lewin and others, however, demonstrated that parts of the framework can be operationalised (Arthur 1992; Godard 1997; Lewin & Sherer 1993). These attempts though do reveal the need for clear definitions, particularly in relation to what constitutes a strategic choice. These works also provided further insight into the role of ideology, the relationship between actors’ choices, and the influence of the external environment on strategic choices.
2.2 Analysing Agreement Making within the Strategic Choice Framework

Just as Kochan, Katz and McKersie (1986) sought to build on Dunlop’s (1958) systems approach, Walton, Cutcher-Gershenfeld and McKersie (1994) sought to build on Kochan, Katz and McKersie (1986) by giving even more focus to the interactions between management, employees, and unions, as well as the processes through which they made agreements. The work of Bamber (2009) evidences the compatibility of the strategic negotiations framework with the strategic choice framework.

The strategic negotiations framework fulfils three analytical functions in this thesis. Firstly, it reveals that strategic choices are shaped by their desirability and feasibility. Secondly, it assesses how strategic choices play out during the agreement making process. Thirdly, the framework helps to define what the consequences of the removal of SIAs are by specifying the outcomes of agreement making.

2.2.1 The strategic negotiations framework

Walton, Cutcher-Gershenfeld and McKersie’s (1994) strategic negotiations framework can be used to dissect changes to labour-management relations through agreement making. The framework (Figure 2.2) reveals that strategic choices of actors in agreement making (including negotiations and bargaining) are shaped by their desirability and feasibility, and they are also affected by the negotiations which are dependent on the negotiation strategies of the parties, the type of negotiation process and the structures of the negotiations. These in turn affect the outcomes that are realised.

![Figure 2.2 Detailed framework for analysing a strategic negotiation](image)

2.2.2 The desirability and feasibility of change to the labour-management relations

Walton, Cutcher-Gershenfeld and McKersie (1994) made a valuable contribution to our understanding of labour-management relations when they recognised that when a party wants to alter the existing labour-management relationship that the choice for change isn’t solely shaped by the desirability of change but also by the feasibility of the sought change. This helps to explain why the strategic choices that actors are making aren’t always their preferred choices. Feasibility according to Walton, Cutcher-Gershenfeld and McKersie (1994, p. 54) is shaped by expected responses, the parties bargaining power and other enabling factors. As the authors explain “within the constraints of what is feasible, a range of choices are usually available” (1994, p. xv). Fells and Skeffington (1998) argue that one of the major contributions of Walton, Cutcher-Gershenfeld and McKersie’s (1994) work is the recognition that feasibility is an analytical construct for analysing choice, as it forces the “explicit consideration of alternatives, particularly the status quo” (1998, p. 36).

2.2.3 Strategic negotiation outcomes – The substantive terms and social contract

Walton, Cutcher-Gershenfeld and McKersie (1994, pp. 42-44) divide the outcomes of the agreement making process into the substantive terms and the social contract. The advantage of assessing the outcomes as elaborated in the strategic negotiations framework is that it distinguishes between individual and collective agreements and their making. This is particularly necessary because, as Flanders (1975, p. 216) argues, comparing individual bargaining with collective bargaining is not comparing like with like. Labour is not bought or sold on the basis of an agreement during collective bargaining. This rather shapes the substance and procedures by which labour can be sold (Blyton & Turnbull 2004, p. 226) whereas during individual bargaining when an agreement is reached the parties are committed to each other. Collective bargaining also creates a form of joint-regulation of which individual bargaining knows no equivalent. Collective agreements enables management to regulate entire groups of workers and thereby in some instances minimize bureaucracy and optimize organisational efficiency (Fox 1985, p. 112). There are also differences in an individual’s bargaining power compared to that of a collective (Flanagan 2008).
The substantive terms cover the wages and conditions of employment as well as the rules governing the workplace. The substantive terms include economic matters such as wage levels, productivity, efficiency, costs, or profitability of the workplace. They also include a range of non-economic workplace rules such as the way relations between management, employees, their representatives and any other third parties are formally organised such as managerial prerogative, employee voice, power relations, or grievance procedures (Blyton & Turnbull 2004; Flanders 1975; Fox 1966). These substantive terms can be further broken down into substantive and procedural outcomes.

The definition of the substantive terms that Walton, Cutcher-Gershenfeld and McKersie (1994, pp. xii, 42-43) use – they also refer to it as the substantive contract – encompasses a number of different regulatory mechanisms which regulate the employment relationship. Besides negotiated contracts and industrial instruments their definition can also include company policies and procedures as well as historical practices.

The social contract on the other hand “outlines in broad terms the nature of the relationship and prescribes the quid pro quo among the parties” (Walton, Cutcher-Gershenfeld & McKersie 1994, pp. 42-43). The social contract can be regarded as the ideologies that are adhered to by the parties. Where the social contract between the parties is apparent, and shared, it will have a minimal impact on the negotiations and on the enforcement of an agreement. When, however, a party wants to – or has to – break an existing paradigm, then it becomes part of the negotiations and is likely to impact also on the substantive terms (Walton, Cutcher-Gershenfeld & McKersie 1994, p. 43).

There is an important distinction in the social contract between management and the workforce and management and the union(s). The management-employee social contract can be based on compliance or commitment, whilst the management-union relation can be characterised as (1) containment or avoidance, (2) arm’s-length accommodation, and (3) cooperation. These labour-management relations are depicted in Table 2.2. It will be assessed in this thesis whether under the new regulatory regime the existing social contracts will be altered, especially
managements’ strategic choices will be critical because of their direct influence on the interactions and outcomes.

**Table 2.2 Forms of the labour-management social contract**

<table>
<thead>
<tr>
<th>Relationship with employees</th>
<th>Containment or avoidance</th>
<th>Arm’s-Length Accommodation</th>
<th>Cooperation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commitment</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Walton, Cutcher-Gershenfeld and McKersie (1994, p. 11)

Management’s willingness to negotiate and bargain over matters is directly influenced by its ideology (Fox 1966). Management’s adherence to a unitarist perspective is associated with a managerial decree and anti-union attitudes whereas when management adopts a pluralist perspective it recognises that employees can be represented by unions since as a group they have a separate interest. Sisson (1987, pp. 190-191) argues that the advantage for management to make certain outcomes open to negotiation is that it implicitly demands that other matters are left to managerial discretion. Theoretically, the fact that some outcomes are achieved through joint regulation further provides management with greater legitimacy for enforcement, whilst simultaneously it increases the perceived fairness and compliance with the rules which strengthens managerial control.

The social contract is an important outcome of an agreement making process (Fonstad, McKersie & Eaton 2004, p. 7). There are, however, varying definitions and interpretations of the social contract, as also underlined by Walton, Cutcher-Gershenfeld and McKersie (1994, p. 62). The definition of the social contract that is adhered to in this research – which is in line with the strategic negotiations framework – is relatively narrow in that it focusses on the described labour-management
relationships at the institutional and individual level rather than, for example, broader definitions which take a more societal ‘norm’ approach.\(^5\)

2.2.4 Realising the outcomes – The interaction system

The outcomes of an agreement making process are the result of how the involved actors’ strategic choices interact throughout negotiations. The interactions are affected by their negotiation strategies, processes, and structures. These are shaped by the power relations between the parties, the attitudes towards each other, and the level of interest that the parties have in the matters under consideration (Walton, Cutcher-Gershenfeld & McKersie 1994, p. 44).

The parties can choose from three strategies, namely forcing, fostering and escape to achieve changes in the social contract and/or the substantive terms (Walton, Cutcher-Gershenfeld & McKersie 1994, p. 23; 37). The three concepts have been used regularly in the ER and negotiations literature (Baird 2002, p. 367; Boxall & Purcell 2000, p. 188; Cutcher-Gershenfeld & Kochan 2004, p. 12). Forcing and fostering are negotiation strategies but if any of the parties can escape, this restrains the counter-party’s ability to foster or force (Walton, Cutcher-Gershenfeld & McKersie 1994, p. 56). The negotiation strategies directly and indirectly affect the agreement making. The strategies can be used directly to try to achieve immediately desired outcomes. They can be used indirectly to push the other party into particular behaviour counter to their objectives, for example management can force employees into costly industrial action by refusing to negotiate. Although in such instances neither party directly realises its desired outcomes, the party with the greater power and resources can use these strategies to achieve its desired goals over time and impact on the long-term ability of the other party to achieve theirs.

The focus of the strategic negotiations framework is on how managers, by adapting any or a combination of the three strategies, can change the outcomes of the negotiations (Walton, Cutcher-Gershenfeld & McKersie 1994). This leads Bacon and Blyton (2007) to suggest that the strategic negotiations framework has been mainly conceptualized from a managerial perspective. In a similar vein Fells and Skeffington (1998, p. 36) argued that the strategic negotiations framework “is essentially a

\(^5\) Walton, Cutcher-Gershenfeld and McKies (1994, p. 62) refer in their footnote to the work of political theorists for alternative use of the concept of ‘social contract’.
framework of management’s strategic considerations”, pointing out that the escape option holds less value to unions than it does for management. For unions to realise outcomes for their members there has to be some form of relationship with management, hence it can be questioned to what extent escape can be seen as a union bargaining tactic, let alone for employees.

Power relations substantially influence how a negotiation process plays out. It also affects the parties’ capacity to choose and apply the forcing or fostering strategies (Cutcher-Gershenfeld & Kochan 2004, p. 12; Walton & McKersie 1965). By adopting one or more of the three negotiation strategies the initiator doesn’t always control the outcomes beforehand (Frost 2001, pp. 558-559; Walton, Cutcher-Gershenfeld & McKersie 1994, pp. 347-348).

Negotiation processes can be identified by the nature of negotiations between the parties, the attitudes the parties have towards each other, and how they manage their internal relations throughout and after the negotiations (Walton, Cutcher-Gershenfeld & McKersie 1994, p. 44). Negotiations can be categorised as distributive (zero-sum game) or integrative (mutual benefit) (Fonstad, McKersie & Eaton 2004; Walton & McKersie 1965), each with a distinct set of tactics.

The attitudes between management-unions-employees further influences the negotiation processes as the “underlying norms and tone of their relationship” shape how the process unfolds (Walton, Cutcher-Gershenfeld & McKersie 1994, p. 45). Purcell (1987, p. 539) emphasises that scholars for a long time tended to distinguish between cooperative and adversarial relationships.

Management, employees, and unions are not necessarily homogenous groups. It is thus relevant how internal differences within these groups are managed as these can affect the negotiation process (Walton, Cutcher-Gershenfeld & McKersie 1994, p. 46; Walton & McKersie 1965). This on the one hand relates to the capacity of a negotiator to sell the outcome to constituents, whilst on the other hand any discrepancies can be (strategically) exploited by the other actors. How the parties manage their internal relations will influence their capacity to achieve desired outcomes, as well as the counter party’s capacity to exploit existing internal frictions.
Lastly there are four aspects to the structures of negotiations (Walton, Cutcher-Gershenfeld & McKersie 1994, p. 50). Firstly, there is the frequency of interactions and the number of channels that are used by the parties. Secondly, there are differences between the interactions at the individual and institutional levels. Thirdly, the degree of centralization, the level at which negotiations take place, is the aspect of structuring that affects the process and outcomes. For example differences may be observed between enterprise and industry level agreements. Lastly, the number of parties involved in negotiations also is an aspect of the structure.

Negotiation structures are important when investigating how outcomes are realised. Walton, Cutcher-Gershenfeld and McKersie (1994, p. 52) explain that “Some modifications in the structure of negotiations are exogenous, or imposed by forces outside the immediate labour-management relationship. Other structural changes are endogenous, or instituted by one or both parties to facilitate their current negotiation processes. Structures are important because they are closely related to strategic choice and implementation.”

2.3 Improving the Understanding of the Regulatory Environment

Both strategic choice and strategic negotiations frameworks recognise that the parties are making decisions in the context of their external environments. One important aspect of the external environment, particularly in Australian ER, is the legal framework that constrains and directs the activities of the parties. The strategic choice framework recognises that actors impact on their external environments, yet New Chicago School (NCS) regulation theory (Lessig 1998) and the concept of regulatory space (Hancher & Moran 1989) are included in this thesis as they provide additional insight into the complex dynamic relationship between actors that are regulated (regulatees) and their regulator(s). NCS further offers insight into how regulatory changes affect the other parts of the external environments, whilst the theory also brings to the forefront the notion that a change in law is not going to result in straightforward change at the enterprise level. Where the other frameworks do not consider the making of law – the politics of law – as part of the external environment, regulatory space brings to the forefront how the law comes into place and the role that the actors can potentially play in this.
Firstly, the relationship between regulation and ER is briefly discussed. NCS regulation theory as developed by Lessig (1998) is then considered as this particular theory helps to frame a better understanding of how the regulatory forces, and in particular labour law, shape ER strategic choices. Thirdly, the concept of regulatory space is introduced. By using these complementary to the strategic choice and the strategic negotiation frameworks an enhanced understanding of the complex and dynamic relations that exist between actors that are making the strategic choices and the external (regulatory) environment in which these are made is achieved. The works of Charlesworth (2010) and Kaine (2009; 2010; 2011) demonstrated that their use can be a valuable addition to ER research, and that it can contribute to existing analytical tools such as the strategic choice and strategic negotiations framework.

2.3.1 Legal regulation and employment relations

Australian ER scholars have long been aware of the impact of legal regulation on employment relations (Frazer 2009, p. 74). The strategic choice framework was, however, developed against a backdrop of a ‘relatively’ stable regulatory system in the United States. Therefore the emphasis in Kochan, Katz and McKersie’s (1986) analysis wasn’t as explicitly focussed on this part of the external environment. Given the ‘regular’ overhauls the Australian ER regulatory system has undergone, especially from the late 1980s onwards (Isaac & Macintyre 2004; Stewart 2009; Stewart 2011; Stewart 2012), a more detailed understanding of this part of the strategic choice model will help to better understand actors’ choices and how these play out.

Legal regulation of labour markets comes from a number of different institutional actors. Law by itself is heterogeneous. Quinlan (2006, p. 24) explains that therefore there are tensions between different branches of law. The focus here is on those aspects of the law that are of relevance to the industrial agreement making and the employment relationship. Thus when analysing labour markets it needs to be recognised that instead of being the result of coherent legislation by one institutional authority it is the result of legislation and techniques issued by a combination of different institutional actors whose regulation can be both co-operative and conflictive, even at the same time (Arup 2006, p. 719).
2.3.2 New Chicago School regulation theory
The inclusion of New Chicago School (NCS) regulation theory (Lessig 1998) provides a better understanding of how changes in ER legal regulation shape managerial choice. NCS (Figure 2.3) follows the notion that actors are limited in their behaviour, as well as their strategic choices, by four types of constraints: law, markets, norms, and architecture. Hence it is not only the legal regulation but the combination of the various constraints that “constitute a sum of forces that guide an individual to behave or act, in a given way” (Lessig 1998, p. 663).

Figure 2.3 New Chicago School (NCS) Regulation Theory

NCS emphasises that law can regulate directly and indirectly. Indirect regulation happens where law modifies one of the other constraints. The circle in the centre of Figure 2.3 is the ‘regulated entity’ whose choices and behaviour are being constrained, or in Lessig’s (1998, p. 664) words the regulated entity is “feeling or suffering the constraints”. Law thus not only directly constrains the strategic choices of an actor but at the same time it can also interact with the other constraints and thereby shape the context in which the actors are operating.

In addition to law, markets can constrain the choices and behaviour of both individuals as well as collectives through their price setting mechanisms. At the same time markets are reliant upon laws and norms to function (Lessig 1998, p. 663). Likewise Arup (2006, p. 722) argues that for any markets to function, exist, and prevent excesses, a certain degree of legal regulation is required. Societal norms also constrain choice through what is considered to be socially acceptable behaviour. Legal regulation can influence these norms by, for example, promoting, forbidding, or
penalising certain behaviour (Lessig 1998, p. 666), but the reverse is also true in that evolving societal norms can affect which legal regulation is enacted, amended, superseded, or abolished. Lastly, architecture defined as the world as it is found by the regulated entity (Lessig 1998, p. 663), or as Kaine (2009, p. 69) explains “the built and natural environment” in which the actors operate and which constrains the behaviour and choices that can be pursued. Legal constraints can shape and influence the architecture, for example town planning (Lessig 1998, p. 666).

The constraints cannot be assumed to be internalised by the actors (Lessig 1998, pp. 677-78). More than that, an actor has sometimes the ability to defy a constraint. The defiance can be caused by non-rationality, irrationality, or even rationality. Also incomplete internalisation or even the characteristics of the regulatory constraints can cause defiance. Constraints on an actor can be subjective or objective. Therefore according to Lessig (1998, pp. 678-679) it “must [be] determine[d] first the extent to which an objective constraint is subjectively effective: second, the extent to which an objective constraint can be made subjectively effective; and third, the extent to which what is not an objective constraint is, or could be made, subjectively effective.” NCS regulation theory thus also helps to understand how and why in certain circumstances the situation arises where actors are able to defy the constraints to which they are subjected, which also enables them to challenge the intent of their regulator(s).

2.3.3 The regulatory space construct

The inclusion of the concept of ‘regulatory space’ helps to further frame the dynamic and complex relationship between the regulators, regulatees and other non-state actors in an ER regulatory system. It expands upon NCS regulation theory by further assessing the relationship between regulator and regulatees. Hancher and Moran (1989) developed this analytical construct, or metaphor as Scott (2001) prefers to describe it, to highlight how regulation in the economic domain – which thus includes labour markets – is shaped by the relationships and interactions between regulators, regulates, and other non-state stakeholders.

Regulatees, those being regulated, often have a better understanding of how proposed legal regulation will affect them than their regulator (Scott 2001, p. 231). This suggests that the often dominant perception that law is the result of a hierarchical – one way –
relationship between regulator and regulatee is not always the case (Scott 2001, p. 232). Because of information asymmetry regulatees are able to lobby, manipulate or persuade regulators to adjust proposed regulation. In addition it is argued that in some circumstances it can be questioned to what extent regulation is a continuation of a “pre-existing relationship of power” (Scott 2001, p. 233). The concept of regulatory space thus also brings to the forefront part of the political process of making law.

Hancher and Moran (1989, p. 277) use a broad definition of regulatory space, arguing that it can cover all the domains of regulation over which regulators have scrutiny in the public domain. Instead of regulatory space it is also referred to as a regulatory arena, as it is a demarcated space in which regulators, regulatees and non-state stakeholder interact (Hancher & Moran 1989, p. 277). The concept of regulatory space further highlights the fact that regulatory power can be fragmented and dispersed across several regulators (Scott 2001, p. 329), whilst these regulators in turn can be influenced and affected by regulatees.

Although the notion of non-hierarchical regulator-regulatee relations would only apply to those regulatees with sufficient resources, access, and influence it does highlight the complex and dynamic relationship between a regulatee and its regulator. This is also captured by the strategic choice model which highlights the ability of some actors to influence their external environment. Regulatees, however, must possess the right resources and be willing to act in the public domain in order to ‘manipulate’ regulation in their favour. Or as Hancher and Moran (1989, p. 277) put it: “The boundaries which demarcate regulatory space are defined in turn by a range of issues, so it is sensible to speak of regulatory space as encompassing a range of regulatory issues in a community. In these terms regulatory space may be furiously contested. Its occupants are involved in an often ferocious struggle for advantage. Any investigation of the concept involves examining the outcomes of competitive struggles, the resources used in those struggles, and the distribution of those resources between the different involved institutions. In other words, the play of power is at the centre of this process.”

The regulatory space is not only occupied by regulators and regulates, it can also include other non-state stakeholders who can influence the legislative process, presuming they have the necessary resources (Scott 2001, pp. 329-330). Furthermore,
whilst the concept of regulatory space highlights that the relationship between regulator and regulatee can be complex and dynamic, and that it can be horizontal as well as hierarchical, more often than not the amount of regulatory power the regulatees and other stakeholders can exercise is limited. According to Scott (2001, p. 243) most regulatees do not (directly) experience a non-hierarchical relationship with their regulator(s), rather they view the relationship as being hierarchical – even though at times they may be able to exercise influence. Hancher and Moran (1989) further argue that at times it can be similarly important to understand which parties are incapable of exercising any power within their regulatory space. The construct thus also helps to better identify and explain the influence and roles of the various regulators, as well as the capacity of the regulatees to influence these within the context of the Australian ER regulatory system.

**Conclusion**

This chapter has set-out the theoretical framework that is used in this thesis to address the research questions that is what strategic choices did management of organisations operating in the Western Australian (WA) mining industry that used statutory individual agreements (SIAs) make in response to the removal of these agreements from the federal employment relations regulatory system, why were these particular choices made, and how have these choices as well as the regulatory changes in relation to the removal of the SIAs affected their organisations? Three compatible and complementary theoretical frameworks and an additional analytical construct are used in this research to analyse this research problem at hand.

The strategic choice framework (Kochan, Katz & McKersie 1986) functions as the main lens through which the management ER strategic choices are analysed. The other theories refine our understanding of specific parts of the strategic choices framework. The strategic negotiations framework (Walton, Cutcher-Gershenfeld & McKersie 1994) enables the research to analyse changes in the labour-management relations that are the result of industrial agreement making, it further gives insight into how strategic choices play-out in negotiations. It thus enhances the outcomes side of the strategic choice framework. New Chicago School regulation theory (Lessig 1998) and the regulatory space construct (Hancher & Moran 1989) on the other hand improve our understanding of the relationship between actors and the external environmental
factors that constrain managements’ strategic choices, in particular it reveals the
dynamic and complex relationship between actors and the legal constraints to which
their choices are subjected.

The strategic choice framework and literature are based on non-deterministic
assumptions of the role of the external environment on actors’ choices. Thus faced
with the same pressures actors have the capacity to pursue different strategic choices.
These choices are, however, constrained by factors in the organisations’ internal and
external environment. Strategic choices can be made by all actors operating in an ER
system. The choices can be pro-active or re-active, but they have to be deliberate and
alternatives have to exist. Strategic choices further do not have to impact directly on
other parties, whilst outcomes also do not necessarily reflect intentions. Outcomes are
rather the result of the interactions – struggles – of the strategic choices from the
various actors. The strategic choice framework recognises that actors through their
choices influence the external environment in which they are operating.

The strategic negotiations framework helps to investigate how strategic choices,
especially managements’ choices, influence and shape the industrial agreement
making. The strategic negotiations framework further adds to the strategic choice
model by emphasizing that in addition to the external and internal factors that choices
are also constrained by their feasibility and desirability. The framework further outlines
that managements’ choices in agreement making are implemented through broad
strategies (forcing, fostering, and escape). The strategic negotiations framework
moreover enables this research to assess changes in the labour-management relations
before and after the removal of the SIAs by breaking down the outcomes of the
negotiations into the substantive terms and the social contract.

Given that successive changes in legislation brought about the introduction and
removal of SIAs in the Australian ER regulatory system, this research cannot neglect
the relationship that exists between the labour law and the rest of the external
environment in which actors operate and make their strategic choices. Because of this
centrality of legislative change, and the fact that the strategic choice framework was
developed against a background of a relatively stable legal regulatory system, the
inclusion of NCS regulation theory permits this research to adopt a more dynamic and complex understanding of this part of the external regulatory environment.

NCS regulation theory brings to the forefront the importance of understanding the complexities and interdependencies of the different constraints, including law, which make up the external environment. These constraints constrain actors’ strategic choices directly and indirectly. NCS regulation theory further recognises that actors can, intentionally and unintentionally, defy the constraints to which they are subjected, which informs the strategic choices management made in response to the legislative changes.

The inclusion of the regulatory space construct on the other hand enables a better understanding of why some actors are better equipped at influencing and responding to legal constraints to which they are subjected. It explains why they are able to cope with undesirable aspects, and recognises that relationships between regulators and regulatees are not necessarily hierarchical. Regulatory space thus helps to explain why some actors are able to mitigate, circumvent, or diminish their legislators’ intent. It brings to the forefront power relations and aspects of the political process of making law. It reveals that actors (regulatees) thus in certain instances, directly or indirectly, can influence the legal regulatory constraints to which they are subjected. It therefore further adds to the understanding of the relationship between actors and their external environment and how these interact.
Chapter 3 – The Context: Employment relations in the WA mining industry

Introduction
This chapter provides the context for employment relation (ER) in the Western Australian (WA) mining industry, which is the focus of this study. Firstly, the characteristics of the industry which shape ER are discussed. Secondly, the historical employment relations in the dominant section of the WA mining industry, the iron ore sector, are highlighted, which reveals a turbulent history rife with industrial conflict. Thirdly, the uptake of SIAs in the WA mining industry is considered, particularly in relation to the iron ore industry. This is followed by a detailed account of the use of SIAs in the two major mining conglomerates that dominate the iron ore mining industry in WA. The workplace relations reforms implemented by these two major mining conglomerates are considered so as to illustrate how SIAs were used and what was achieved by their implementation. Fourthly, it is shown that the continued existence of SIA regimes in this part of the industry has not been a straightforward exercise. It required deliberate action on managements’ part to maintain the SIA regimes. This chapter concludes by reiterating the main (historical) contextual factors that need to be taken into consideration for this research.

It is not intended here to provide a full account of all the historical events in the WA mining industry. Rather the purpose of the chapter is to demonstrate the importance of the context in which actors make their choices. The unique trajectory of employment relations in the WA mining industry shaped managements’ choices to use SIAs in the first place, and also affected decisions in relation to their removal.

3.1 The Key Characteristics of the WA Mining Industry
The mining industry is comprised of the extraction and excavation of different commodities. The industry can be categorised into three broad categories (Moore & Gardner 2004, p. 276): energy related commodities (such as coal), metallic (ferrous and non-ferrous commodities), and non-metallic minerals (for example diamonds). For the purpose of this research it is necessary to demarcate the sections of the industry that are taken into consideration. This research focuses primarily on the dealings of the metallic minerals as this is where the bulk of the SIAs were being used in WA.
The general characteristics of the industry are relevant as they influence the ER. The economic context of the organisations such as product and financial markets, the nature of the operations of organisations including the technology, the remote character of the industry, union structures, as well as historical labour-management relations all influence and shape the relations that are found in this industry.

### 3.1.1 Economic conditions shaping ER in mining

When analysing ER in the mining industry it is found that economic considerations heavily influence the labour-management relations. The capital intensive nature of the industry, for example, directly affects the relations. Because of the high upfront costs investors want management to exercise significant control of the operations to mitigate risks, and this included control over the workforce. The ability to manage mining operations in WA was complicated by the remoteness of some of the operations (Fells 1990). Moreover, mining from its initial development in WA – whether it was the gold or iron ore mining – has had a high dependence on foreign direct investment (Dufty 1984; Segal 2002), which is also reflected by the dominance of trans- and multinational corporations in the industry (Raggatt 1968; Siddique 2009).

The mining industry is cyclical in nature (Fells 1990) and economic ‘boom’ and ‘bust’ cycles can be identified (Goodman & Worth 2008; Thompson 1987). Volatility in the demand and price for commodities heavily impact on the economic state of the industry. The economic cycles that are found in mining are reinforced by the close inter-linkages between commodity prices, exchange rates, demand for the commodities, and the dependence of the industry on financial markets (Dufty 1984, p. 55). The globalised nature of the industry enhances this exposure, and the cyclical nature is also observed in the labour-management relations (Dufty 1984; Thompson 1987). Downturns result in redundancies, pressures on wages, and in some instances the (temporary) closure or wind-down of unprofitable projects (McDonald, Mayes & Pini 2012). Boom periods on the other hand are associated with relatively high wages, high labour-turnover, and competition for workers (Tonts 2010).

Organisations have different priorities depending on the economic cycle of the industry. Output is managements’ main priority in periods of growth (Thompson 1987). In order to ship out as much of the commodities as possible during periods of high
demand and high prices, management has demonstrated a willingness to make ER concessions to the workforce so as to ensure there is continuity of supply. In contrast, in periods of stagnation and decline management face considerable cost pressures which result in ER strategies focussed on cost reduction and improvements in efficiency and productivity. Downturns bring into contention some of the privileges that have been granted to the workforces during the ‘boom’ periods (Thompson 1987). Thus managements’ ER strategic choices have to be viewed within their economic context.

A historical reflection on the economic state of the WA mining industry reveals that the WA mining industry has gone through a number of boom and bust cycles throughout the twentieth and twenty-first centuries. It has seen boom periods briefly in the 1960s, for a short period in the 1980s, and more sustained from the 2000s onwards (Connolly & Orsmond 2011). The industry was, however, affected by “a particularly long period of stagnation” (Connolly & Orsmond 2011, p. 114) in the global steel industry from the mid-1970s till early 2000s. Given that the steel market is the main export destination for both iron ore and coking coal, this had a substantial impact on the performance of the WA iron ore sector. Moreover, global events have always heavily affected the industry, such as the energy crisis in the 1970s (Dufty 1984; Thompson 1987).

At the beginning of the 1990s when the SIAs first became available – which was 1993 – the industry was still sluggish following the recession of the 1980s (Connolly & Orsmond 2011). There was, however, a substantial improvement in conditions throughout the 1990s (Clements, Ahammad & Qiang 1996). This changed with the Asian financial crisis at the end of the 1990s and the global recession in the 2000s, both had a significant downward impact on the demand for the commodities and the performance of the industry. At the beginning of the 2000s exploration expenditure, which is an important indicator of the economic state of the industry, was still only at 1960s levels (Connolly & Orsmond 2011, p. 119). Demand picked up again in the 2000s when the iron ore sector experienced a long investment and expansion ‘boom’ due to the increased demand from China (Ye 2008). The Global Financial Crisis (GFC) in 2007 briefly interrupted this. A quick recovery, however, followed due to the sustained Chinese demand (Connolly & Orsmond 2011, pp. 115-116).
The non-ferrous metallic sections of the industry (such as gold and nickel) went through a fairly similar pattern. It experienced substantial investment and increased demand in the mid-1990s, and a down-turn in the aftermath of the Asian financial crisis. This section of the industry, however, did not recover at the same pace as the iron ore sector throughout the 2000s. A sharp downturn was experienced in this part of the industry due to the GFC and even resulted in the closure of some operations in WA (Connolly & Orsmond 2011, p. 131; McDonald, Mayes & Pini 2012).

3.1.2 Geographical considerations affecting ER

The geography of the mining industry should also be considered when analysing ER (Ellem 2002; 2006b; McDonald, Mayes & Pini 2012). The mining activities are spread across the state which has a landmass greater than Western Europe. WA is sparsely populated (a population of 2.5 million in 2014) with the bulk of its inhabitants (78 per cent) living in the Greater Perth Metropolitan area (ABS 2014, p. 3), whilst most of the mining activities take place in the rural and remote parts of the state.

The labour-management relations in the mining industry are shaped by the fact that mines are located in remote locations. The place bound nature of the industry, the ‘spatial fix’ of capital, that is required to extract the commodities places limitations on capital’s mobility (Ellem 2006b; Harvey 2001). Ellem (2002, p. 69) explains that “mining is one of those industries in which specific operations (though not necessarily companies themselves) are place-bound.” Given this place-bound nature and its heavy reliance on exporting, the WA mining industry has been vulnerable to disruptions caused by collective industrial action undertaken by employees (Dufty 1984, p. 55). The remote nature of the industry has further affected the composition of the workforce as well as the work-life patterns in the industry.

The first two decades of the iron ore mining industry were characterised by workforces residing in company towns, where the influence of the company was noticeable throughout the community. Company towns were a state government requirement for the development of the projects (Dufty 1984). In the 1980s, however, these towns were ‘normalised’, i.e. transferred to local government control rather than being under the discretion, and ownership, of the companies. Thompson (1981) explains that this normalisation process also had implications for ER. In the company towns the
employees’ cost of living was heavily subsidized by the organisations, and this was wound back as the towns were normalised. In turn, this meant that the employees’ capacity to financially afford taking industrial action was reduced as cost of living pressures were increased. Reducing the employees’ ability to undertake strike action through the normalisation process was found in some instances to be a deliberate management strategy, as was revealed by leaked internal company documentation (Thompson 1981).

In more recent times there has been a shift from residential to fly-in-fly-out (FIFO) workforces. FIFO not only has implications for the design of work (Beach, Brereton & Cliff 2003), it also affects regional development and the traditional mining towns (Houghton 1993; McKenzie 2010; Storey 2001). It further impacts on the composition of the workforce, and decreases cohesion amongst workers (Ellem 2002).

3.1.3 Labour-management tensions in the WA mining industry

High levels of industrial disputes throughout the history of the WA mining industry, iron ore in particular, have shaped today’s labour-management relations across the industry (Bulbeck 1983; Dufty 1984; Frenkel 1978; Swain 1995; Thompson 1987). Labour-management tensions in the industry have mainly revolved around two issues: the workers’ control over their labour and the parties’ share of the profits (Thompson 1987, p. 66). Labour’s value in the production process in mining operations is affected by differing factors such as the quality of the ore body mined, commodity prices, exchange rate fluctuations, technology, the way in which work is performed, and the number of employees required (Dufty 1984, p. 16). The design of work and the number of employees required have also provided for ongoing tensions between management and the workforce (Thompson 1983, pp. 66-67) and affected the relationship between management and the ‘blue-collar’ workforce – also referred to as the ‘wages’ or ‘award covered’ employees. It is the relationship between management and this section of the workforce that most ER research on the industry has concerned itself with, including this one, rather than the managerial, professional, administrative, or support staff of these organisations.

The level of control management allows workers to have over their labour is further complicated by operational considerations (Fells 1990, pp. 5-6). The life span of mines
is influenced by the way in which the ore bodies are mined. For mining organisations there are often tensions between long- and short-term commercial considerations as to what grades of ore are mined first. These managerial decisions directly influence the life-span of projects. Furthermore, the precision required in terms of engineering and planning to ensure safety as well as to maximise the economy of the mine requires constant monitoring and managerial oversight. Thus operational considerations can cause conflict with employees who want to retain a level of control over their labour, for example in relation to roles, rosters, or the actual place of work.

3.1.4 Unions in the WA mining industry

The union movement in the WA mining industry, especially in the iron ore sections, has been far from homogenous. Historically this was reflected by demarcations disputes between unions who covered various occupations such as the tradesmen and process workers, which resulted in substantial demarcations between roles (Dufty 1984).

In the iron ore industry, for example, entire workforces were unionised and covered by more than ten different unions whilst nowadays there are still five unions involved in covering the bulk of the employees in the industry (Dufty 1984; Ellem 2003b; Ellem 2004; Swain 1995), namely the:

- Australian Manufacturing Workers’ Union (AMWU)
- Australian Workers Union (AWU)
- Construction, Forestry, Mining and Energy Union (CFMEU)
- Electrical Trades Union (ETU)
- Transport Workers Union (TWU)

A number of these unions were quite militant, leading to further industrial tensions between labour and management (Dufty 1984, ch 2). Up until the 1990s the strength of unions in the industry was largely ensured through ‘closed-shop’ arrangements. This provided unions with substantial influence in the workplace through their shop stewards and convenors (Allen 1992; Dufty 1984; Swain 1995).

3.1.5 Technology’s impact on ER in mining

What is also of particular relevance for ER is the role of technology. Dufty (1984, p. 26) explains that technology determines how work is performed, whilst at the same time
“[t]echnology may also place small groups of workers in strategic positions where relatively minor strikes or industrial action can impose severe penalties upon management”. The introduction of new technology was historically not only a fertile ground for labour-management conflict but also for inter-union conflict. Due to the demarcated nature of the unions in the industry, inter-union conflict because of the introduction of new technology was not uncommon. Competition for members was, for example, reflected in inter-union disputes about coverage rights.

The introduction of new technology in the mining industry poses a dual threat for the workforce. Technology affects the required manning levels and threatens the relevance of certain roles. Technology, especially in the form of automation, reduces workers’ job control. Hence there is a dual threat to job security and job design.

One of the most recent developments in the industry is the move towards full automation of rail freight and operations by the iron giants Rio Tinto Iron Ore (RTIO) and BHP Billiton Iron Ore (BHPBIO) (Bellamy & Pravica 2011; Ellem 2014). These managerial decisions for increased automation have to be viewed against a backdrop of fluctuating demand for resources, tight delivery schedules, large capital investments, volatile commodity prices, the pursuit of profits, and ensuring that (ER) vulnerabilities in the production network are eliminated.

3.1.6 Differences between underground and open-cut mining
In terms of ER there are differences between underground and open-cut mining. Underground mining in WA linked remuneration systems to output much earlier than open-cut mining did. Piece rate systems could already be found in gold and nickel mining from the nineteenth century. Furthermore, a number of the WA underground gold mines already operated in a union free environment before enactment of the SIAs (Fells 1990, pp. 22-23).

3.1.7 Other developments affecting labour-management relations in mining
There were three further important developments in the industry have affected labour-management relations. Firstly, there is the increased reliance on contractors (Houghton 1993; Bowden 2003). Although contractors have been part of the industry for a long time, organisations are increasingly relying upon contracting organisations to perform various tasks. Allonby (1998, p. 255) explains that the capacity to utilise
contractors was enhanced by workplace reforms in the 1990s, alluding to the fact that previously the awards, EBAs, and informal arrangements placed limitations on managements’ capacity to contract out work.

Secondly, the industry has relied strongly upon skilled migrant labour since the 2000s in order to fill skill gaps during the mining boom (Bahn, Barratt-Pugh & Yap 2012). Both have implications for ER as they reflect management gaining further control over the operation.

Thirdly, when this research was conducted the industry was at the beginning of another typical mining transition in terms of composition of the workforce, namely that from the investment and construction phase to the actual operations (Tonts 2010), which has implications for the size and composition of the workforce.

To conclude, the characteristics of the industry shape work and the labour-management relations and so set the context for the managerial strategic ER choices. As the above discussion about the economic cycles of the industry reflects, place and time are most critical in the industry. Solomon, Katz and Lovel (2008, p. 146) summarise the dynamics in the industry as follows:

“Speed, efficiency and reliability of production are part of what makes companies competitive and new technologies are sought and applied to these ends. The current boom in demand for mineral resources has generated further pressures to increase the pace, scale, and rate of development, or more precisely, to exploit resources before prices drop. “Time is money” is the constant pressure, and in the mining industry this is most readily evident in the management and arrangement of labour time such as long shifts and rostered time on site. Working arrangements such as FIFO, long rosters and working hours and round-the-clock shifts are used to cover 24-h operation, and relatively high wages attempt to address the challenges of attracting and retaining labour under these conditions and often in remote locations. Meanwhile, the time-consuming nature of approvals processes, negotiations with traditional owners and community engagement activities, sits uneasily within this ‘time-squeeze’.”
3.2 ER in the WA Iron Ore industry in the pre-SIA era

A historical reflection on labour-management relations in the pre-SIA era is essential as it gives an indication of what organisations in the iron ore mining industry were able to achieve through their use of SIAs. It is important to place contemporary issues in their historical context (Kochan 1998, p. 35).

The ER literature has focused on iron ore mining because of its economically dominant position in the WA mining industry (for example Bulbeck 1983; Dufty 1984; Ellem 2005; 2014; Frenkel 1978; Lee 2013; Hearn Mackinnon 2009; Swain 1995; Thompson 1987; Yuill 1987). In terms of export quantities and economic relevance iron ore has also taken up a prominent position in the WA mining industry since its development in the 1960s (Dufty 1984; Thompson 1987) and nowadays represents over 50 per cent of the State’s mineral exports value (Department of Mines and Petroleum 2013, p. 12).

In the early stages of the industry the labour-management relations in iron ore were shaped by the isolation of the Pilbara which is 1200-1500km away from Perth the nearest capital city, the harsh climate, a pioneering mentality, as well as the composition of the construction workforce (Dufty 1984). Because of initial labour shortages employees and their unions were able to exercise significant influence on the management of the operations (Bulbeck 1983, p. 432). Management initially were not challenging union power in any fundamental way, and were rather reactive in their behaviour. Thompson (1987, p. 70) states that in the mid-1960s and early 1970s: “‘[m]anagerial prerogative’ was nowhere near as important to management as keeping a stable workforce to fulfil rapidly increasing orders for iron ore.”

Managerial prerogative was restricted by various forms of external regulation in the mining industry in the form of industry/enterprise awards, over-award agreements negotiated between management and unions, and the tribunal decisions on matters such as dismissals. In addition, informal arrangements at the shopfloor between lower level management and the employees further imposed restrictions on managements’ capacity to allocate labour across operations (Dufty 1984, p. 317). The numerous formal and informal constraints on managements’ prerogative were illustrated in the proceeding before the tribunal in the 1981 Hamersley (Thompson 1987, pp. 75-76) and the Robe River dispute (Gethin 1990). In both instances management successfully
sought to remove what it perceived to be ‘restrictive workplace practices’, as well as ‘sweetheart agreements’ (Thompson 1987, p. 76).

Restrictive workplace practices place “restrictions on how firms can use inputs” (Schmitz 2005, p. 609) and in particular have a detrimental impact on labour productivity, which results in overstaffing as well as the non-optimal use of production equipment (Schmitz 2005, p. 583). The practices are reflected by artificial barriers between jobs in the form of demarcations, whilst they can also lead to operational inefficiencies in terms of, for example, maintenance, shift change, or handover practices.

Management especially had difficulties in getting the employees to undertake the duties they wanted them to perform. Most difficulties arose with respect to “management’s right to require a worker to undertake all tasks within his classification. One common form of this type of dispute occurs when a union covering the operation of certain types of equipment challenges the right of management to require a tradesman repairing that equipment to test it during maintenance procedures” (Dufty 1984, p. 154). What was evident from the 1960s till the 1980s was that unions posed a considerable challenge to “what management regards as its right to manage” (Dufty 1984, p. 154).

The desire of management across the iron ore industry to change the labour-management social contract was thus influenced by what they regarded as the poor industrial relations climate of the industry. The industry had been hampered by high levels of industrial disputes (Bulbeck 1983; Dufty 1984; Frenkel 1978; Swain 1995; Thompson 1983), whereby the conflicts that made it before the tribunal predominantly revolved around managerial prerogative as well as wages and conditions (Dufty 1984, pp. 127-129).

From the mid-1970s onwards there were concerns from management, the state and federal governments, as well as some of the full-time union officials that the high levels of industrial disruption were damaging Australia’s reliability as a supplier – and thus threatening the economic prosperity of the industry (Dufty 1984, pp. 227; 246-250).
Japan, who was Australia’s major client for iron ore at the time, was indicating that it was looking to diversify its sources of supply because of the issues in relation to ‘continuity of supply’ (Dufty 1984, p. 247). At the same time Brazil – in which the Japanese also had a stake as purchaser and through minority ownership (Rodrik 1982) – was becoming a greater competitive threat to the Australian iron ore industry (Galdon-Sanchez & Schmitz 2002, p. 1233; Thompson 1987, p. 71). de Sa and Marques (1985, p. 251) explained that “[t]he threat of overdependence on Australia led Japan to a worldwide diversification of supply sources”.

As a result distinct ER management strategies to address concerns about inefficient and underproductive operations could be found from the 1980s onwards in the WA iron ore industry, whereby an increased pro-activeness from management could be found. An important goal for management was to reassert managerial prerogative and increase control (Swain 1995). All the major miners – at different times – decided to seek changes to the social contract with their employees and the unions through forcing, fostering, and escape tactics (Dufty 1984; Swain 1995; Thompson 1983; Walton, Cutcher-Gershenfeld & McKersie 1994). These management strategies occurred in an economic context of decreasing demand for the commodities, pressures on commodity prices, and an increasing overseas competition (Dufty 1984; Galdon-Sanchez & Schmitz 2002; Thompson 1987). Both confrontational and consultative management approaches to address the conflictual labour-management relations could be found across the industry (Dufty 1984; Foy 1993; Thompson 1987).

Although the companies went through different struggles, in the end most companies took a confrontationist approach to achieve the desired reforms. Individualisation was used from 1993 onwards to avoid unions and deal directly with employees. Notably, those organisations that took a more confrontationist approach from the outset were able to achieve the desired reforms more swiftly than those who initially adopted a consultative approach.

Goldsworthy was the first organisation that adopted a more consultative approach to try to address the adversarial relationship with its workforce. It wanted to alter the social contract with its workforce and the unions as early as 1979. Dufty (1984, p. 250)

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6 The Goldsworthy operations had ceased when the SIAs became available.
cites one of the organisation’s managers who outlined their rationale for this strategy: “We know it was in the area of communications and trust that things had to be improved. Our employees and the union officials we dealt with were reasonable people. So were we. But we had to prove to each other that we were. We had to get rid of the “them and us” situation.” Goldsworthy therefore adopted a fostering strategy. Thompson (1987, p. 73) somewhat sceptical, however, argued that what this managerial strategy achieved was that “in effect, the conveners were co-opted as another tier of managerial control”. Mt. Newman on the other hand only went down the path of more consultative efforts after it suffered through a protracted strike in 1988 (Foy 1993).

Leaked internal documentation from Hamersley Iron (part of the Rio Tinto group) from 1979 on the other hand demonstrated more confrontational strategic plans by management to address the relationship with the workforce, the industrial unrest, and the shop floor union structures (Dufty 1984, pp. 201-203; Thompson 1987, pp. 71-72). Management’s goal was to get “a more docile, submissive, labour force” (Thompson 1981, p. 302). The organisation was planning to reduce the employees’ ability to undertake strikes by reducing their capacity to recover lost earning whilst at the same time placing increased cost of living pressures upon them through the town ‘normalisation’ process. Moreover, management wanted to preoccupy the union officials so that they weren’t interested in strikes. As management articulated it: “channel their efforts away from strike agitation whilst satisfying their egos and desire to be seen to be active in the union movement” (Thompson 1987, p. 72). Stockpile levels were also increased in order to give greater security of supply should industrial action occur.

Another strategy of Hamersley’s management to regain prerogative was to retract from the informal deals that were made at the shopfloor level that were outside the scope of the industrial instruments. This eventuated during the 1981 dispute. Dufty (1984, p. 251) explains that for the organisation “the real problem lay in the deals struck at the workplace level which had significant impacts on costs and efficiency”. The dispute was triggered by management’s unilateral decision to introduce new technology, which provided for efficiency gains (Thompson 1981, p. 71). The affected shovel drivers in response went on strike and management retaliated by withdrawing
“from all industrial relations procedures and refused to recognise the authority of all union convenors” (Thompson 1987, p. 75).

Management wanted to take away power from the shop floor and bring it back to senior management and the full-time officials in Perth (Bulbeck 1983, p. 432). Management was able to withdraw from a number of inefficient practices by reneging from the informal agreements. The tribunal in the proceedings following the dispute took the position that a substantial number of these matters should indeed be left to management’s prerogative (Thompson 1987, pp. 75-76). These management decisions were taken at a time when CRA, of which Hamersley was part, was developing a new management style since its leadership perceived the organisation to be in dire state and vulnerable to hostile take-over bids (Lynch 2011, p. 7).

Before the SIAs were introduced, it was Robe River that took the most confrontationist approach out of the four major iron ore miners in its attempt to change the labour-management social contract and thereby to improve the fortunes of the organisation. Robe River had been hampered by high levels of labour strife, and production levels were far below potential capacity (Reynolds & Dawson 2011, p. 223). Robe River’s competitive advantage, however, had to be its capacity to compete on cost due to the chemical composition of its ore bodies (Lonie 1991). The organisation was more reliant upon the spot market and didn’t have the buffer of long-term contracts that some of the other iron ore miners had (Smith & Thompson 1987), which meant there was further pressure on costs.

When Peko-Wallsend took over the daily management of the organisation its assessment was that Robe was overstaffed and unproductive (Copeman 1987). Peko’s management attributed this to a large extent to the concessions that were made to the unions and workforce. Although other stakeholders, such as the WA state government and the company’s Japanese partner, urged the new management to show restraint on ER, Peko decided to “simply assert management’s right – and responsibility – to manage” (Copeman 1987, p. 541).

Some have criticised the hard line approach that Peko’s management took and argued that it was rather poor management (Yuill 1987), whereas others have hailed its courage to take on the unions and employees (Gethin 1990). Without going into the
full extent of the dispute, it is evident that despite suffering a long and protracted dispute that management was able to change the workplace culture in the organisation and very successfully lift productivity levels with a reduced workforce (Copeman 1987; Gethin 1990; Swain 1995ch 11; Yuill 1987). Schmitz (2005, pp. 614-618) quantified management’s success of the abrupt removal of the restrictive work practices. The dispute itself affected output somewhat in the first year, however after that it increased by over 75 per cent whilst labour productivity in the organisation tripled. One of the main achievements of management was to get more productive hours out of its machinery by changing the organisation’s maintenance as well as work and relief practices, including shift change and handover practices. As a result machines spent more time in production rather than being idle (2005, p. 617).

Managerial ER strategic choices in the Robe River dispute were apparent in a number of ways. Firstly, management deliberately attacked the unions; it not only sought to diminish the unions’ on-site power structures but also challenged the institutional settings which empowered them – the system of compulsory conciliation and arbitration (Swain 1995, p. 234). Secondly, management took a deliberate decision to use all legal remedies at its exposal. It preferred to rely on the courts rather than the tribunal. Furthermore, it appealed those tribunal decisions that went against management’s objectives. Swain (1995, p. 233) explained that “[m]anagement attempted to test the legal limits of management’s strategic choices in industrial relation in 1986 and 1987”. Peko’s management further successfully used the court system to curb the threat of industrial action (Smith & Thompson 1987).

The Robe River dispute also had wider implications for the industry in terms of labour-management relations. With respect to unionisation Robe River for the first time in the WA iron ore mining industry’s history successfully challenged the closed-shop practices (Swain 1995, p. 234). After the dispute the on-site union structures were left shattered (Thompson 1987, pp. 78-79). Ironically the trigger event which had inflamed the dispute was ‘staff’ doing ‘wages’ work (Copeman 1987), yet a further outcome of the dispute was that the demarcations between jobs were blurred, and that the strict differentiation between ‘wages’ and ‘staff’ employees was partly unwound. During the dispute management had required ‘staff’ to fulfil other duties to keep production going, it had therefore required all ‘staff’ employees to sign individual contracts
“stating that they would undertake to perform all work within their competence” (emphasis added) (Swain 1995, p. 235). Interestingly, this clause would become standard practice throughout the industry under the SIAs.

Management across the iron ore mining industry were thus already developing strategies to curtail industrial disruption, reduce the influence of the union structures at the workplace level, and change relations with their employees before the SIAs became available. Management legalised their ‘relationship’ with employees and the unions and further sought to circumvent the tribunal (Allen 1992; Gethin 1990; Hearn Mackinnon 2007; Thompson 1987, p. 76).

3.3 The use of SIAs in the WA mining industry

When the SIAs, in the form of the state WPAs and federal AWAs, became part of the ER regulatory regimes in the 1990s they became a popular and preferred industrial instruments amongst management in the WA mining industry. Moore and Gardner (2004) surveyed and interviewed managers of WA mining companies on their use of SIAs around 1998-1999, and found that more than half of the organisations utilised these agreements. At the time the majority of them still relied on the state WPAs rather than the federal AWAs. They concluded that the mining organisations viewed the SIAs as an important instrument for facilitating workplace reform.

One of the limitations of the existing SIA literature on the WA mining industry is, however, that the bulk of the research has revolved around the leading iron ore mining ‘duopoly’ of Rio Tinto Iron Ore (RTIO) and BHP Billiton Iron Ore (BHPBIO). As these have been the dominant organisations in the WA mining industry they have been most closely examined. Nonetheless there is evidence that the use of SIAs for workplace reform was not exclusive to these two organisations but was rather prevalent across the WA mining industry at the time. The wider reliance of companies throughout the WA mining industry on SIAs is presented before the roll-out of SIAs in the two leading mining conglomerates in the iron ore industry is discussed in more detail.

3.3.1 The use of SIAs throughout the WA mining industry

In 1999 WPAs were the most commonly used industrial instrument in the mining industry and management argued that these state SIAs had been instrumental for their organisations in terms of implementing desired workplace reforms (Moore & Gardner
SIAs were widely used throughout the metallic mining industry, including gold, nickel, bauxite, iron ore, manganese and others. Although the academic literature is limited on the actual use of SIAs in the sections of mining other than iron ore, newspaper articles do reveal that gold, nickel, and copper miners were amongst those that publicly spoke out about their use of the SIAs. Management moreover also publicly defended the use of SIAs and advocated their continuation when the Rudd Labor government proposed their removal (Clarke 2007; Loney 2007; Macdonald 2007a; Kalgoorlie Miner 2006; Scott 2007; Taylor 2007).

Likewise a number of contractors that provide services to the mining companies relied on SIAs to regulate their workplace relations (Sprague 2008; Wan et al. 2007). The larger of these organisations have also been outspoken advocates of the agreements and were vehemently opposed to Labor’s proposed removal of the SIAs (Weir 2007; Workplace Express 2008). Similar to the experiences of the major miners, the roll-out of SIAs by contractors was at times heavily contested by the unions (Hearn Mackinnon 2005; Martin 2004; Paganoni 2004).

On the other hand in WA’s coal and bauxite industries the uptake of SIAs wasn’t as prevalent. The coal miners didn’t generally seek to reform their workplace relations through the use of individual contracts (CME & AMMA 2001, p. 9) although small pockets of SIAs were present, such as for administrative staff rather than the production workforce in one organisation (Interview Manager 20). In the bauxite sector the major miners relied on union and non-union collective agreements instead of SIAs (Skulley & Scott 2007; Interviews Manager (MN) 07, MN08, MN15, MN26, Industry Expert (EX)08), although some on-site contractors used SIAs (Curtis 2006; Fox 2006; Matthews 2006).

Links between productivity and changes in ER regulatory regimes are difficult to establish (Dolman 2009; Hancock et al. 2007). Some organisations were able to realise substantial productivity and efficiency increases as a result of their SIA regimes. Nonetheless it could not be demonstrated that the utilisation of SIAs resulted in greater productivity gains for the entire industry (Peetz 2005a; Peetz 2005b).
3.3.2 Individualisation at Rio Tinto Iron Ore (Hamersley Iron)

Hamersley Iron was one of the first organisations to adopt the workplace agreements (WPAs) under the WA state system (Hearn Mackinnon 2007; Hearn Mackinnon 2009; Tracey 2003). The roll-out of the WPAs was part of a broader managerial strategy to overcome the conflictual ‘us’ and ‘them’ culture and move towards an ‘all staff’ system. This was not only reflective of the organisational strategy at Hamersley but part of broader organisational reforms in the CRA/Rio Tinto group (Ludeke 1996; Lynch 2011; Hearn Mackinnon 2007; 2009). Part of this strategy was to get the workforce to increase their trust in management and sign ‘staff agreements’ which effectively abolished most of the existing demarcations. In order to move towards a ‘single status workforce’ (Ludeke 1996; Tracey 2003, p. 3) the ‘wages’ employees were enticed to sign WPAs by offering of a number of additional benefits, such as family healthcare cover, which previously had only been available to ‘staff’ employees. In return the employees agreed to increased management discretion about the design of work, including greater workplace flexibilities (Ludeke 1996; Hearn Mackinnon 2007).

Although closed-shop practices already became illegal in WA in 1979, in the early 1990s it was still common for management in the mining industry to cooperate with the enforcement of closed-shops. This meant that individual employees did not have the freedom to choose not to be a member of a union, and which was thus counter to those interested in greater individualisation in the employment relationship. In 1992 Hamersley decided to change its course on this issue when it refused to dismiss a non-unionist, Beales, a decision which led to a protracted and a costly dispute which was eventually settled in management’s favour, partly through the company’s strategic use on SIAs (Hearn Mackinnon 2007). Initially Hamersley’s management, similar to Robe River, resorted to using the courts rather than the tribunal in the dispute, and went a step further than Robe’s writs for damages. In addition it also strategically sought an injunction ‘quia timet’ when workers initially returned to work to prevent the unions from engaging in further industrial action (Allen 1992). Management’s success in the legal proceedings severely weakened the position of the unions as they could not use their industrial muscle to pursue their claims (Hearn Mackinnon 2007, pp. 62-63).

Allen (1994) identified various ways in which management ‘exploited’ the advantage of the injunction. The company limited its interaction with the unions and took a hard
line against unionists who harassed non-unionists. It also went ahead with the implementation of its single status ‘all staff’ workforce by offering WPAs in December 1993. Moreover, as a sign of ‘good will’ it passed on a wage increase that had already been under negotiation before the dispute erupted, which was opposed by the unions. Allen (1994) explained that “the unions even did Hamersley a favour by initially opposing the wage increase before the Commission” as it provided management with goodwill from the workforce and alienated the workers from their unions. Lastly, as part of a typical ‘carrot’ and ‘stick’ approach (Peetz 2006, pp. 125-127), the organisation decided to reduce its workforce and offer redundancies, which led to the “voluntary” departure of a substantial number of ‘undesirable’ employees and ‘dyed in the wool’ unionists (Allen 1994).

Similar to Robe River, production levels at Hamersley were maintained and productivity was improved (Hearn Mackinnon 2007; Tracey 2003). The success management enjoyed in getting employees to sign up for the WPAs, in combination with the above strategies, meant that union structures at Hamersley collapsed (Hearn Mackinnon 2007, p. 65).

The roll-out of the individual contracts at Hamersley should, however, not be regarded as a reactive management response to the dispute with the unions (Pratt 1997, p. 116). Rather it should be viewed as part of the trajectory of deliberate organisational HR and ER strategies of attempting to change the organisation’s culture in the labour-management social contract. The strategy had been in the making over 10 years (Lynch 2011; Hearn Mackinnon 2007) when the dispute erupted. It was merely the trigger event that enabled the company to implement the desired workplace reforms that it not had been able to achieve under the collective ER regulatory systems. The organisation had also already been experimenting with more individualised relations in other parts of the organisation (Hearn Mackinnon 2007; Hearn Mackinnon 2009).

3.3.3 BHP Billiton Iron Ore’s uptake of SIAs

BHP Billiton Iron Ore (BHPBIO) (including Mt. Newman) is the other main iron ore producer in the WA mining industry. At the end of the 1990s, after the events at Hamersley and Robe (both now RTIO), BHPBIO had become the only union stronghold in the Pilbara iron ore industry (Ellem 2002, p. 68). Its workplace relations regime,
before the SIAs, was one of substantial layering of external regulation, which included
the relevant award, various EBAs, and an unregistered IR agreement between the
company and the unions (Fetter 2002). This restricted management’s capacity to
unilaterally implement change, whilst the organisation also faced higher labour costs
and more restrictive workplace practices than its main competitor, RTIO (Fetter 2002;
Stockden 2000).

The organisation sought to introduce SIAs in 1999, only after due diligence discussions
for a merger with Rio Tinto broke down. During the due diligence exercise BHPBIO’s
management found that its main competitor was vastly superior in terms of
productivity and labour costs (Stockden 2000) and its management subsequently
decided that it had to realise similar outcomes (Fetter 2002, pp. 13-15). BHPBIO’s HR
management regarded the SIAs as one of the key ER differences between them and
RTIO, which therefore influenced the organisation’s rationale to go down the path of
individual agreements. An additional pressure to undertake significant reform to
reduce costs was a fall in iron prices at the time.

BHPBIO’s management thus desired to implement substantial workplace change which
would be achieved through the reliance on WPAs. A direct consequence of BHPBIO
management’s decision to utilise these state SIAs was that the influence of the unions
in the organisation was severely weakened. Ellem (2003b, p. 287) explains that the
roll-out of the WPAs at BHPBIO had all the characteristics of a de-unionisation
exercise. The company withheld on collective bargaining, it reduced levels of
employment, and set up an attractive redundancy scheme. Again parallels with the
Hamersley and Robe events can be observed.

While inter-union disputation was used as one of the arguments to legitimise the
managerial strategy (Fetter 2002), the company was careful not to frame the
introduction of SIAs as a de-unionisation exercise but argued that it was no longer
willing to implement change via negotiations with the unions (Fetter 2002). This was,
for example, evidenced by the company’s representatives explaining – in a legal
dispute in relation to the SIAs – that the company wasn’t interested to know whether
an individual employee belonged to a union, thus arguing that union membership was
irrelevant to management in its decision to go down the path of workplace reform.
through the use of SIAs. Management also explained that it had not actively tried to stop or enforce closed shop practices, nor had the company stopped deducting union fees (Stockden 2000 section 18-20).

The exercise was thus framed as one necessary to achieve the organisation’s goals, which it believed couldn’t be achieved through the process of collective bargaining with the unions. Fetter (2002, p. 35) explains that BHPBIO “appears to have been genuinely pursuing work flexibilities, with de-unionisation a necessary (but perhaps not a wholly regrettable) incident of that strategy”.

Unions heavily contested the roll-out of the WPAs in BHPBIO (Ellem 2002; 2003b; 2004; 2006b), and engaged in industrial action. For a while they also succeeded in delaying the roll-out of the agreements by resorting to the legal system. Despite the unions’ initial success in taking the dispute into the legal arena, it was the company who emerged victorious out of the protracted court cases. “For BHPBIO, the outcome of the dispute was an unambiguous victory” (Fetter 2002, p. 24).

Although BHPBIO had been less successful than Hamersley in getting its workforce to sign up to the WPAs (Ellem 2002), it still managed to get the necessary critical majority to implement the required changes in terms of workplace practices (Fetter 2002, p. 23). The lower uptake of SIAs as well as the unions’ choices to contest the agreements via the courts illustrate, however, that strategic choices don’t necessarily determine outcomes, but rather that the “struggles between strategic choices” do (O’Leary & Sheldon 2008, p. 239).

The strategic choices of the unions were, for example, evidenced in their responses to the company’s SIA offer. One of the ways in which the unions tried to resist the company’s SIA offer was by seeking a new state award. The WPAs contained a substantial wage increase and the cashing out of accrued sick leave for those employees who signed up (Fetter 2002, p. 16). The unions were successful in their case before the WA state tribunal to get a new award with wage increases equal to those offered to the SIA employees, which was granted in 2002 (Ellem 2005, p. 344).

While the employees who remained under the realms of the award system were granted a wage increase by the tribunal, at the same time the employees were
expected by the Commission to partly abide by the new workplace relations, including work practices, that management had introduced through the SIAs (Thornthwaite & Sheldon 2002). For example in relation to functional flexibility the tribunal set out clear requirements in its judgement: “the classification structure is not to be taken by the employees as placing a restriction on flexibility in the performance of work” (AFMEPKIUA vs BHPIO & others (05810) 2002 section 14). Thus although a group of employees decided to remain on the collective instrument, the organisation at large was able to implement the new workplace practices it had desired and the SIAs proved to be instrumental in achieving this.

3.4 The Characteristics of the Major Miners SIA regimes

The SIAs of the major iron ore miners were quite similar in that the agreements were bare bone and referred a substantial number of matters to company policies and procedures. Hence their management were able to achieve similar objectives through the use of SIAs, such as gaining greater workplace flexibilities as well as increased managerial prerogative and control (Fetter 2002, p. 18), whilst ridding themselves of any remaining rigidities that had traditionally been associated with the award system. The speed at which change in the organisation could be implemented was an important driver to go down the path of SIAs (Stockden 2000). Organisations required increased flexibilities to respond to changing market demands and since the SIAs provided management with almost unfettered prerogative and high levels of control, they were considered a prerequisite in order to be competitive (Cooper & Ellem 2008).

SIAs were further instrumental in changing organisational cultures. Table 3.1 shows an internal communication from a mining organisation on what it wanted to achieve with the SIAs. The document reflects the intention of the organisation to introduce a different organisational culture, whereby the objective was to change the relationship with the workforce, employees’ attitudes, introduce different remuneration structures, and a more individual performance oriented culture. Likewise it was stated in another internal document that the organisation wanted to “recognise, reward and promote the initiative of all the people”.
Table 3.1 Management objective through the use of SIAs

‘What Will People Do Differently’

- Work without Demarcations.
- The salary has been set taking into account all requirements of the job and including such additional hours which may be required to be worked to complete the job.
- Work will be allocated on a “most skilled person for the job” basis and everyone work to maximum of their skills.
- People understand the need to implement change quickly and apply new technology promptly.
- Salary increases are based on your performance record.
- You can make a contribution to the business to the full extent of your ability
- You see your future dependent on the success of the business and are aligned with the business and want to see [Company] as the best [commodity] business in the world
- Sick leave is for people who are genuinely sick – not just to drop off*

Source: internal document, mining company

* added by a manager in handwriting

An objective of the major miners through the use of SIAs was to move away from the traditional separation between ‘wages’ and ‘staff’ employees to an ‘all staff’ single status workforce. The rationale behind this was that the adversarial relations between labour and management were detrimental to organisational success. The approach reflects the unitarist perspective of aspiring to a more harmonious organisation (Fox 1966) and was a deliberate move to change the social contract from one based on compliance with the employees to commitment, whilst unions were simultaneously excluded from the labour-management relationship. With the SIAs, the organisations managed to establish new workplace cultures based on direct employer-employee relationships by escaping the relationship with the unions, a goal that was advocated throughout the mining industry (AMMA 2007b; AMMA 2009; Kates 2012). Ellem (2002, p. 82) explains that in the case of RTIO the majority of employees “felt that in the early to mid-1990s managers had been genuinely committed to a new, co-operative model of work. Earnings and morale were high and rising.”

SIAs were also important instruments for the introduction of new remuneration structures in organisations. Under SIAs employees’ annual increases were linked to an individual employee’s performance. This also provided management with greater flexibility over its costs. By having in place the SIAs management could implement
individual performance management systems (IPMS) and link these to performance related pay arrangements. Organisations thus moved from previously fixed annual increases stipulated in the industrial agreements to increases at management’s discretion. The unions vehemently opposed this move, as it meant that annual increases were ‘at risk’ for the employees since management could unilaterally decide whether or not to award these wage increases (Peetz 2006, p. 132).

The SIAs not only reduced the unions’ involvement in the industrial agreement making in the mining organisations but reduced their presence in other ways. Organisations used the SIAs to introduce new internal grievance procedures that reduced the scope for employee (union) representation and access to the tribunal (Ellem 2002, p. 82). Both WPAs and AWAs further reduced the capacity of unions to enter the workplace through the restrictions on right of entry provisions (Peetz 2006, pp. 135-137; Todd, Caspersz & Sutherland 2006, p. 513). Another benefit of SIAs for management was that they reduced the ability for the unions to re-organise and re-collectivize the employees. SIAs could have differing nominal expiry dates, and thereby provided organisations with increased industrial certainty, i.e. reducing their exposure to possible industrial action. The main issue for the unions and employees was thus that when “AWA expiry dates are not the same, it may be difficult for workers to gain a sufficient critical mass of 'expired' AWA employees at the appropriate time for any industrial action to have an impact” (Van Barneveld 2006, p. 182).

Although organisations were careful not to refer to their SIA offers as de-unionisation attempts, scholars such as Peetz and Ellem have consistently portrayed the organisations’ activities in this way. Peetz (2002; 2006) found evidence that the agreements resulted in reduced union membership and effectively made an end to collective bargaining. Ellem (2002, p. 67) declared that “BHP Iron Ore set out to reduce if not eliminate effective union presence from its operations in Western Australia’s Pilbara.” Management of WA mining organisations (Dennis 1998; Stockden 2000) nonetheless made it clear that there was no longer to be a role for unions in the industrial agreement making, whilst direct employer-employee relations are also still strongly advocated by the industry (AMMA 2007b; AMMA 2009; Kates 2012).
Through the roll-out of SIAs the union movement in the Pilbara took a heavy blow. The WA mining industry went from being one of the heartlands of unionism in Australia to one almost free of “union interference”. The union movement has, however, tried to regroup and re-organise the employees across the industry, albeit with limited success (Ellem 2002; 2003a; 2003b; 2004; 2005; 2006b; 2014). When studying the unions’ attempts to regain a foothold in the industry – in BHPBIO the unions continued to have a small presence throughout the organisation’s period of SIAs – it is found that their attempts were hindered by a number of important strategic decisions that management of the major miners made which ensured their continued exclusion from the industrial agreement making process.

3.4.1 The shift from the state to the federal ER regulatory system

Both RTIO as well BHPBIO introduced the individual employment contracts under the WA state system and were thus affected by the replacement of the WPAs by the more restricted Employer Employee Agreements (EEAs) (see section 1.2.1). The two major miners, and many others, therefore shifted from the state WPAs to the federal AWAs to preserve their individual regimes (Ellem 2003a; 2004; 2005). RTIO initially attempted to shift its WPA employees onto a 170LK (non-union) collective agreement rather than the AWAs because its management perceived the non-union collectives “to be less cumbersome” than SIAs (Ellem 2003a, p. 431). This attempt failed as the workforce voted it down and instead opted to remain on their SIAs (Ellem 2003a; Sheldon & Thornthwaite 2003). The relevant unions, who had tried to regain a foothold in RTIO, supported the workers’ decision to vote down the 170LK. Ellem (2002, p. 81) points out that this was a difficult position for the unions given their ideological objections to the SIAs that were preserved through the ‘no’ vote.

Ellem’s (2003a, p. 432) panel interviews indicated that the rejection of the company’s non-union collective offer was, however, not a vote in favour of the unions. It appeared that a large section of the workforce was not interested in the existing unions and the ‘no’ vote was rather a rejection of the harsher management style the company had adopted (Ellem 2002, p. 83). Employees were dissatisfied with the unilateral managerial decisions regarding working hours and shifts, and the loss of job control. Community factors, such as the impact of FIFO arrangements, also played a role (Ellem 2002, p. 82).
Although the workforce’s rejection of the 170LK came as a surprise to management, it responded quicker than the unions. It went through an internal consultation process, identified and addressed some of the employees’ grievances, and started offering AWAs instead. It is worthwhile noting that the AWAs were offered well before the WPAs expired. This caught the unions on the back foot. They had been busy setting-up new organising structures – including the development of a new ‘unity’ union – with the aim of re-collectivising RTIO. The AWA offer, however, limited their chances of negotiations for an EBA (Ellem 2003b, p. 292; 2005, p. 348; 2006b, p. 379).

BHPBIO switched directly to the AWAs after the WPAs. Ellem (2005, p. 348) explains that this wasn’t surprising given two factors. Firstly, with the setback RTIO had experienced with its 170LK, AWAs appeared to be the safer alternative. Secondly, a sizeable proportion of the BHPBIO’s workforce was still unionised and ongoing frictions between the unionised workers and the company persisted. AWAs didn’t run the same level of risk in terms of a ‘no’ vote campaign as their offers could be staggered and the agreements could also be made a pre-condition of employment for new employees.

Unions have heavily contested the SIA regimes at both RTIO and BHPBIO and have actively sought to re-enter the workplaces and ‘de-individualise’ and ‘re-unionise’ them (Ellem 2002; 2003a; 2003b; 2004; 2005; 2006b). The unions’ attempts to regain a foothold in RTIO were further frustrated after the 170LK ‘debacle’, including the subsequent AWAs offers, by the strategic decision of RTIO to enter into a federal enterprise award with the AWU. This decision from the AWU national branch to do a deal with management stonewalled the local organising initiatives, and furthermore splintered a briefly found level of inter-union solidarity (Hearn Mackinnon 2005). Although other unions heavily contested the award it was approved by the Commission. The new federal award provided management with the certainty of being covered under the federal regulatory regime and it had the advantage that it minimised the likelihood of management’s prerogative being externally constrained or being roped into ‘good faith’ bargaining with unions under the changed state ER regulatory system (Ellem 2005, pp. 351-353).
3.4.2 Life after SIAs

With the switch to the federal ER regulatory regime the two major miners’ individual regimes appeared to be solidly in place. The election of the Rudd Labor government, however, flagged the imminent end for the companies’ preferred regime, yet before the AWAs were removed both RTIO and BHPBIO managed to renew a substantial number of the SIAs for up to five years (Skulley & Scott 2007).

The looming end of SIAs also coincided with some distinct events in both major miners, which reflects some vulnerability of their preferred individual regimes. In 2008, while the Work Choices regime was being dismantled, RTIO experienced its first strike action in 16 years (Taylor 2008). Train drivers undertook protected industrial action in pursuit of a collective agreement. The industrial action was partially fuelled by the imminent threat of automation of the trains (Brigden 2009, p. 370; Ellem 2014). In this same period BHPBIO concluded a collective agreement with those employees who had remained on the award (Brigden 2009, p. 370). For both companies the number of employees involved with the collective activities was limited (Brigden 2009). Less than 100 employees were covered by BHPBIO’s UCA while fewer than 50 employees took part in the RTIO protected industrial action. The new regime that the Labor government was establishing, however, threatened the employers’ preferred workplace relations arrangements based on individual contracts.

The case of the RTIO train drivers who pursued a collective agreement further demonstrates some of the legal complexities in relation to the transitional legislation as well as the transitional provisions. These provided both managers and unions with additional strategic choices in relation to the SIA covered employees. Ellem (2014) has documented a detailed account from the union’s perspective on the struggle from 2008 till 2011 to obtain a collective instrument. Before the FW Act came in place the CFMEU – the train drivers’ union – sought to negotiate a collective agreement under the old (WRA) regime. The union undertook protected industrial action in pursuit of an agreement and had been successful in forcing management to the bargaining table.

Due to the complex nature of the FW Act transitional arrangements, however, it was prevented from further using industrial action when negotiations stalled under the FW regime. The main reason was that the company had strategically implemented a non-
union employee collective agreement (ECA) in 2008 before the FW Act came in. In this agreement the company had applied a legal technicality to preserve its existing arrangements, or as Ellem (2014, p. 189) explains, to preserve its non-union status. The issue with the ECA was that “it did not apply to existing employees but to all new employees, based on an agreement made initially with 10 such employees who had begun work on a certain date” (Ellem 2014, p. 189). The agreement with a five year expiry date would cover all new employees and prevented these from participating in protected industrial action – which directly had implications for the train driver negotiations. The ECA prevented the union from engaging in further industrial action under the FW regime, as the protected action ballot they sought extended to employees “that were covered by a ‘non-expired’ agreement-based collective transitional instrument” (CFMEU v Pilbara Iron Company (Services) Pty Ltd (8210) 2010).

In response to the stalled negotiations and this inability to exercise protected industrial action the union made two strategic choices. The validity of the ECA was challenged and an application for a ‘majority support determination’ was made. It was the latter decision which led to the eventual breakthrough in the negotiations, and which enabled the union to get management to come to the bargaining (Ellem 2014, p. 194). Although the union ultimately was successful in its challenge to the validity of the ECA, this was however not achieved until after the negotiations – which lasted 18 months – had successfully resulted in an enterprise agreement (EA) (Ellem 2014, pp. 194-195).

Ellem (2014, p. 189) indicated, without much elaboration, that the ECAs played a critical role in the transitional period in the mining industry. There was a sharp increase in the uptake of these ECAs under the transitional legislation (Stewart 2011, p. 121) and it has been flagged that this increase was particularly caused by employers from WA (Ellem 2011). Scott (2007) indicated that the use of ECAs was a deliberate attempt by mining industry to mitigate the risk of the removal of the SIAs. This research will provide further evidence that these agreements were indeed instrumental for the mining industry in preserving their preferred workplace relations.
Conclusion

This chapter described the historical and other contextual factors that shaped the labour-management relations in the WA mining industry. This background informs how actors’ decisions are shaped, particularly in relation to managements’ strategic choices which are the focus of this research.

Managements’ desire for substantial prerogative and control over ER arises out of the uncertainties their organisations face in relation to their financial, product and labour markets. Moreover operational, geographical, and technological factors also feed into this desire. These factors, however, also bring it into contestation with employees’ concerns in relation to job design, job control, and levels of employment. Historical analysis of ER reveals a history of adversarial labour-management relations, industrial strife, and high levels of industrial disputation in parts of the WA mining industry, especially the iron ore sector. The place bound nature of the industry reinforced these tensions.

Management in the WA mining industry through the use of SIAs were able to achieve long desired workplace reforms. SIAs were used throughout the industry but most prominently in the iron ore sector. The agreements provided management with increased levels of control and access to various organisational flexibilities, which in turn could be used to make organisations more efficient and productive. The SIAs were also often part of a management strategy to re-shape an organisation’s culture and establish new ‘direct employer-employee’ relationships. This also entailed the deliberate exclusion of unions. Irrespective of discussions whether managements’ intent was the introduction of ‘workplace reforms’ or that the SIAs were about ‘de-unionisation’, the main observation which is undisputed is that the influence of unions in the industry was severely diminished through the SIAs.

The experiences of the two major miners furthermore revealed how SIAs regimes were implemented and that they were not only vulnerable to challenges by the unions and employees but also to changes of the ER regulatory regime, as shown by the removal of the WPAs. Mining organisations spent years trying to establish their preferred individual ER regimes through the use of SIAs, therefore when the collectivised Fair Work regime was proposed by the Labor government it could be expected that this
was not to be embraced by their management. The limited existing evidence reveals that the industry strongly preferred to preserve the existing workplace relations arrangements. This research will explore whether this was indeed the case, and if so how management went about to achieve this.
Chapter 4 – Methodology: The Trials and Tribulations of Getting Data

Introduction

This chapter outlines the philosophical positioning of this research, describes, and justifies its research design, the applied research methods, as well as data analysis techniques. It further describes the data collection process including the various challenges with gaining access.

This research adopts a qualitative industry case study approach in order to answer the research question at hand. The first section of this chapter justifies this approach on the basis of the adopted relativist ontological and constructivist epistemological positions in relation to social science. It further argues that due to the nature of the question and the subsequent need to derive data from its natural setting that the qualitative methodology is warranted. The second section explains that because of the exploratory nature of the research as well as the ‘why’ and ‘how’ characteristics of the question, that the case study approach is appropriate. It also outlines why the industry forms the bounded system – the case – that is investigated. The section further discusses the trustworthiness criteria that allow the adequacy of the research to be evaluated. The third section demonstrates how the study is reflective of an emergent design, the fourth outlines the data collection methods and the data that was collected, including participant recruitment strategies, characteristics of the interviewees, and some background information on the researched organisations in the WA mining industry. Finally, the last section discusses the data analysis techniques applied in this research.

4.1 Positioning of the Research

This section discusses the paradigm in which the research is situated. A paradigm deals with “the basic belief system or worldview that guide the investigator, not only in choices of method but in ontologically and epistemologically fundamental ways” (Guba & Lincoln 1994, p. 105). A paradigm is thus affected by the views of the researcher (Creswell 2013, p. 19). Additionally for the purpose of this research the researcher’s views and positioning is primarily in relation to human (social) science (Lincoln & Guba 2013, p. 39).
Guba and Lincoln (1994, p. 108) suggest that three fundamental questions need to be addressed in order to position a researcher in a particular paradigm, Corbetta (2003, p. 12) poses three similar questions. These are shown in Table 4.1.

Table 4.1 Paradigm questions

<table>
<thead>
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<tbody>
<tr>
<td><strong>Ontology</strong></td>
<td>What is the form and nature of reality and, therefore, what is there that can be known about it?</td>
<td>Does (social) reality exist?</td>
</tr>
<tr>
<td><strong>Epistemology</strong></td>
<td>What is the nature of the relationship between the knower or would-be knower and what can be known?</td>
<td>Is it knowable?</td>
</tr>
<tr>
<td><strong>Methodology</strong></td>
<td>How can the inquirer (would-be knower) go about finding out whatever he or she believes can be known?</td>
<td>How can we acquire knowledge about it?</td>
</tr>
</tbody>
</table>

4.1.1 Ontology – Relativist

In the social sciences there isn’t a single agreed upon paradigm (Corbetta 2003, p. 11). Differences between disciplines in the social sciences exist. Therefore, for this research the ontology, epistemology, and methodology will be further outlined.

The ontology of the research deals with the researcher’s view of ‘reality’ and “what the nature of reality” is (Creswell 2013, pp. 20-21). In ontological discussions a separation should be made between the (1) physical reality and the (2) socially constructed realities (Lincoln & Guba 2013, p. 11). In this research the adopted relativist ontology is in respect to the latter, since I – as the researcher – believe it is more conceivable that realism more rightfully portrays the former.

This research recognises that physical reality can constrain actors’ choices\(^7\). Therefore it is not argued here that these physical attributes are merely a construction of reality by the individual, but rather that there most plausibly is a “real” physical reality. Lincoln and Guba (2013, p. 12), however, argue that “it is rarely the raw physical reality which shapes our behaviour and response to the physical environment. It is, rather, the meanings, we associate with any given tangible reality or social interaction which determines how we respond.”

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\(^7\) This is reflected in the architectural constraints of the NCS regulation (Lessig 1998) which is used in this research.
In this research therefore it is the socially constructed realities that are investigated. Hence as a social science researcher I adhere to a relativist ontology. It is also the constructed nature of the social relationships that is the focus of the research. To reiterate this point, it should be stressed that the following explanation, by Lincoln and Guba (2013, p. 39), is also the worldview adhered to in this research:

“In the human sciences, entities are matters of definition and convention; they exist only in the minds of the person contemplating them. They do not “really” exist. That, they have ontological status only insofar as some group of person (frequently, social scientists, but often the rest of us, also) grants them that status.”

A relativist ontological position – originally called constructed reality – in relation to social research argues that “realities ought to match the tangible entities as close as possible, not, however, in order to create or derivate or reconstruct single reality, but rather to represent multiple construction of individuals” (Lincoln & Guba 1985, p. 84). This position argues that social reality is constructed in the minds of people and that therefore it is possible to have multiple realities. The sophistication of a constructed reality is that it allows the investigation of social and behavioural phenomena (Lincoln & Guba 1985, p. 87). Constructed reality further differs from objective and perceived reality in that “it doesn’t exist until either (1) it is constructed by an actor or (2) it is created by a participant” (Lincoln & Guba 1985, p. 87).

One of the consequences of framing the research in this ontology is that there are multiple realities of the various participants to consider. Therefore it is essential that the outcomes have to be framed in a holistic manner (Lincoln & Guba 1985, p. 37). A holistic approach has, however, been an integral feature of ER research, as Kochan (1998, pp. 34-35) explains. Thus there is also an appropriate fit between the adopted ontological position and the scholarly discipline.

4.1.2 Epistemology – Constructivist

Inextricably linked to the ontological position of the research is its epistemological position, or as Lincoln and Guba (1985, p. 37) explain, how the knower relates to the known. This research adopts a constructivist epistemological standpoint. Constructivism is the view that “all knowledge, and therefore all meaningful reality as such, is contingent upon human practices, being constructed in and out of interaction
between human beings and their world, and developed and transmitted within an essentially social context” (Crotty 1998, p. 42).

In this research the constructivist standpoint is adopted as it holds more value for social research than the traditional positivistic paradigm. From a positivistic position it would be assumed that the epistemological position of the researcher would be one of a pure observer, that the researcher can detach his or herself from the research and act as an independent actor who does not influence the results, and hence reality (Lincoln & Guba 1985). From a constructivist epistemological standpoint, however, these assumptions are problematic, especially in social research.

Firstly, there is the issue of reactivity whereby the observer is influenced by the choices the researcher makes, no matter how well designed the research tools are (Lincoln & Guba 1985). There is, for example, the issue of selectivity as to which criteria to include in research. Different disciplines have different dominant paradigms which dictate what kind of procedures ought to be followed. Moreover, assumptions are made as to how participants are likely to respond to the stimuli offered. Lincoln and Guba (1985, pp. 94-96) explain that no matter how clever the research is designed, including control variables and the like, this does not fully prevent the knower from misinterpreting the message and thereby providing the wrong information.

A second problem with the assertion of a completely independent researcher is the issue of indeterminacy. Lincoln and Guba (1985) point out that in social as well as in some scientific research an observer through their observations influences and shapes outcomes. “Thus observation not only disturbs but it shapes!” (Lincoln & Guba 1985, p. 98).

The third issue with a positivistic view on the relationship of the knower to the known is interaction, and is relevant particularly in situations where human subjects are researched (Lincoln & Guba 1985, pp. 98-99). Interaction occurs when a researcher is already making presumptions about how participants are likely to react whilst designing the research. When a researcher starts taking into account how respondents are going to react to the questions and alters the instruments accordingly it becomes an issue whereby the researcher infers “what they really meant” (Lincoln & Guba 1985, p. 100).
Only the social researcher who would have a complete understanding of reality would be unaffected by reactivity, indeterminacy, and interaction. It would then make little sense to investigate when a complete understanding of reality has already been reached. Therefore the logic of an epistemological position in which the researcher is able to be completely independent and distanced from the observed is problematic in social research, and it is ‘realistic’ to presuppose that decisions made by the researcher are bound to disturb, shape, and be shaped by the outcomes which are discovered. Lincoln and Guba (1985, pp. 100-101) argue that when it is embraced that there is a relationship between the knower and the known that this can be a strength rather than a weakness. They further point out that respecting and including respondents will lead to richer findings and interactions, particularly in exploratory research (1985, pp. 101-108).

The work of Mir and Watson (2001) further illustrates that the constructivist epistemological standpoint offers most valuable insights into strategy research, as they explain: “constructivism is a particularly interesting approach, for it facilitates study of the fascinating issues such as how strategies are formed, communicated, implemented, and understood in complex organizations which are buffeted by myriad historical and institutional forces” (2001, p. 1173). As discussed in Chapter 2, management strategic choices and organisational strategies are central in this research. Table 4.2 reveals how the constructivist epistemological standpoint views matters in relation to strategy research. It can be observed that these are consistent with what has been advocated in the previous chapters. The concept of ‘dominant coalitions within management’ (Child 1972) which is described in Chapter 2, for example, fits well within the constructivist paradigm (role of the manager; nature of strategic choice; and organisational identity), while also the importance of the context, in terms of understanding the findings of this research, has already been emphasized.
Table 4.2 Constructivist positions for strategy research

<table>
<thead>
<tr>
<th>Nature of observed reality</th>
<th>Socially constructed</th>
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<tbody>
<tr>
<td>Role of manager</td>
<td>Actor, generator of context</td>
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<tr>
<td>Nature of strategic choice</td>
<td>Ideological actions of sub-organisational interest groups</td>
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<tr>
<td>Organisational identity</td>
<td>Multiple, fragmented</td>
</tr>
<tr>
<td>Theories of measurement</td>
<td>Context as the key to perspective</td>
</tr>
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Adapted from Mir and Watson (2001, p. 1171)

4.1.3 Methodology – Qualitative research

The methodology that is adopted in this research follows from the ontological and epistemological “presupposition” which reflect the views of the researcher (Lincoln & Guba 2013, p. 40), whilst it is also warranted on the basis of the research problem that is investigated. A qualitative methodology is preferable when the events under consideration cannot be manipulated and need to be investigated in their natural setting (Merriam 1988, p. 17). The choice is further justified when the research has an exploratory purpose (Strauss & Corbin 1998), like in this particular instance attempting to understand why management of WA mining organisations made the strategic choices that they did, whilst also exploring how the organisations have been affected by the legislative changes.

When the constructed nature of social reality is adopted, the dominant positivistic research methods become unsatisfactory since their attempt to describe context free findings is problematic (Morgan & Smircich 1980, p. 498). Qualitative methods are particularly well adapted to permit a researcher to embrace the context in which research is situated. Rather than problematic, a qualitative researcher views the multiple perspectives offered by participants as an enrichment of the findings (Creswell 2013, p. 47). This is not to argue that it is a debate between the merits of qualitative and quantitative methods. The latter might also be quite valuable for a constructivist paradigm (Lincoln & Guba 2000, p. 174). Rather it is argued that the former is particularly well suited for research situated from this worldview.
In qualitative research the researcher has an active and critical role in the data collection as well as in the data analysis (Creswell 2009, pp. 175-176). Qualitative research often not only differs from quantitative research in its ontological and epistemological position, but also in terms of methodology and research methods. Qualitative research primarily relies on a “nonmathematical process of interpretation, carried out for the purpose of discovering concepts and relationship in raw data” (Strauss & Corbin 1998, p. 11). The qualitative approach further permits a researcher to integrate various sources, in this particular research this includes semi-structured interviews, policy documents, media releases, statistics, and newspaper articles.

Providing a holistic account, rather than attempting to establish causal relationships between variables, is another key difference between quantitative and qualitative research (Corbetta 2003, pp. 43-44). Creswell (2013, p. 47) explains that qualitative researchers attempt to identify “the complex interactions of factors in any situation”.

When qualitative research is set in the natural environment the researcher only has limited ability to exercise influence over it. Therefore emergent designs are also an integral part of qualitative studies (Creswell 2013, p. 47), which is also the case with this study, as will be discussed below.

4.2 Research Design

The research design is outlined in this section. The first part discusses why the case study approach is the appropriate qualitative approach to investigate the research problem at hand. The second section explains why the aggregation at the industry level in this industry is adopted. The third section addresses how this research ensures the trustworthiness of the findings. The last section highlights the necessity of ethical considerations and how these matters are dealt with.

4.2.1 Case study approach

The particular qualitative approach used in this research is a case study approach. Yin (2014, pp. 9-14) explains that this particular approach is useful when attempting to answer ‘how’ and ‘why’ research questions. The approach is also well suited when the events under investigation cannot be controlled by the researcher and the data has to be collected in its natural environment. Moreover, the approach further allows for the investigation of contemporary events. A case study approach requires the researcher
to be “context sensitive” as well as undertake a “holistic approach” (Patton 2002, p. 447). In this research the case study approach is appropriate given the type of research question, the fact that the issues under investigation cannot be controlled, and the contemporary nature of the research problem.

In order to employ a case study approach a definable case has to be demarcated. The ‘case’ has to be situated within a “bounded system” (Creswell 2013, p. 97). These boundaries can be ‘spatial’ and ‘temporal’ or include other specific demarcations (Yin 2014, p. 34). Furthermore the approach is best suited for the investigation of real-life events, suits exploratory research, and relies on the integration of multiple data sources in order to reach an in-depth understanding (Creswell 2013, pp. 97-98). The organisations that used SIAs in the WA mining industry form such a bounded system.

4.2.2 Defining the case as industry

As is evident from the research question and previous chapters this research focuses on the ‘meso’ industry level. Note that the ‘case’ in this research is the described part of the WA mining industry, and it should not be confused with case studies at the enterprise level. This research, whilst exploring choices made by managers at the enterprise level as well as using material from their organisations, is not claiming to have conducted in-depth enterprise level case studies of organisations.

Industry level research is, and has been, an important level of aggregation for employment/industrial (ER/IR) relations scholars (Bray & Waring 2009). They also flagged that a number of key ER/IR studies that developed and used the ‘strategic choice’ literature were single or multi-industry case studies (Bray & Waring 2009, p. 629), such as Cappelli (1985) or Kitay and Lansbury (1997).

Bray and Waring (2009) demonstrated the relevance of this level of analysis for ER scholarship on the basis of three characteristics: firstly empirical relevance; secondly the importance for policy discussion and development; and thirdly its value for developing ER theory. As argued in Chapter 3, the non-energy sections of the WA mining industry – particularly the metallic mineral sections – are empirically quite distinct from other parts of the Australian economy, not only because of their economic characteristic, but from an ER perspective especially because of their
(historical) ER relationships, practices, policies and regulation. This is further reflected in its high reliance on SIAs as part of the industrial agreement making strategies.

An appropriate definition of industry is a problem when conducting industry research (Bray & Waring 2009, p. 620). The traditional economic ‘industry’ definition which focuses on “competing in same product market” (Bray & Waring 2009, p. 620) is too narrow and doesn’t adequately demarcate an industry for ER research purposes. Rather the appropriate demarcation of industry should focus on “analytical ‘function’ as well as ‘form’” (2009, p. 620). Bray and Waring (2009) argue that it is more worthwhile to demarcate industry on the basis of shared institutional characteristics, as well as the structure of the economic activities. Thus rather than demarcating industry on the basis of, for example, ABS classifications it is more useful for ER research to concentrate on union and employer association structures, award coverage, and regulatory institutions that affect organisations. If an industry definition is broader than just product markets this accommodates the inclusion of other organisations that provide, for example, substitute products, whilst it also encompasses suppliers and customers of organisations under such a definition. A broader definition, however, should only be considered and used if empirical and institutional characteristics warrant this (Bray & Waring 2009, p. 620).

For this research, similar to what is described by Bray and Waring (2009, p. 620), the ABS categorisation of industry has its limitations. Due to increasing contracting-out in the mining industry a number of sub-contracted activities aren’t captured under the ANZSIC classifications structure in the ‘Mining division (B)’. Excluded from this classification under the ABS definition are for example categories:

- 3109 Mine site construction (listed under Construction division E) – for contractors providing construction services;
- 3212 Site preparation services (listed under Construction division E) – for contractors in the pre-construction phase;
- 4513 Catering services (listed under Accommodation & Food division H) – for contractors providing catering & remote camp services;
- 6923 Engineering design & engineering consulting (listed under Professional Services division M) – for engineering construction services; and
- 9429 Other machinery (listed under Other Services division S) – like mining equipment maintenance services.

On the basis of the institutional features such as union and employer associations’ coverage, specific mining industry legislation, as well as award coverage, a case could be made that these should be included within the scope of the industry definition.

In order for an industry demarcation to hold value for theory development there has to be a degree of “internal unity” and “relative autonomy” (Bray & Waring 2009, p. 628). This also fits with the requirements for a case, as discussed above, in that there has to be a bounded system. In this particular research the bounded system is based on the economic activities of the organisations, the type of industrial agreements which they used (SIAs), a temporal component in that it focuses on the responses after the SIAs have been removed, and a spatial demarcation which is justified on the grounds of geographical and institutional distinctiveness of WA (as discussed in Chapter 3). Thus the industry focus is on those organisations in the WA mining industry that used SIAs as part of their industrial agreement making strategies.

4.2.3 Quality and credibility of this research

Due to the qualitative nature of the research and its constructivist epistemological position this research recognises the limitations with respect to internal and external validity. Research situated in this particular paradigm recognises that the capacity to make claims about internal (i.e. the causality of relations) as well as external validity (i.e. the capacity to generalize) is limited, while at the same time recognising that this is not problematic (Patton 2002, pp. 544-547). The quality of qualitative studies can nonetheless still be evaluated and its findings thus can add value to the existing body of knowledge. Instead of the conventional criteria this research therefore uses the ‘parallel’ trustworthiness criteria. These permit the trustworthiness of the research to be evaluated on the basis of its credibility, transferability, dependability, and confirmability (Guba & Lincoln 1989, pp. 233-243).

Rather than being concerned with internal validity this research ensures that its credibility is ensured. Marshall and Rossman (2011, pp. 251-252) explain that the credibility is dependent upon the researchers’ ability to demarcate the research, provide insight to the reader into the complexities of the investigated processes, and,
in case study research, demonstrate that the interactions are embedded within the boundaries of the discussed case. Thus the theoretical framework and context of the WA mining industry, as well as the data collection process and collected data, provide insight into the credibility of the research. Through contextualisation and triangulation a better understanding of the researched case can be achieved. This has merits for theorisation, policy discussions, and empirical findings on the industry.

The transferability of the research, instead of external validity, concerns itself with the “applicability of the research results to other contexts” (Thomas 2006, p. 137). The “problem” of external validity with qualitative case study research is that no broad generalizations for entire populations can be made (Yin 2009, pp. 43-44). Given the complexity of social reality, from a relativist ontological position, I do not attempt to make such broad generalizations. Instead the research will contribute and broaden our understanding of the distinct differences in the strategic choices made within the section of the WA mining industry that used SIAs. A case study design permits the researcher to place phenomena in a wider context without making generalizations (Kitay & Callus 1998, p. 103). The limitations of a qualitative industry case study approach do not outweigh the benefits in this particular research. The ability to test, generate, and further develop theory (Eisenhardt 1989; Eisenhardt & Graebner 2007), to explore contemporary issues (Yin 2014), to reveal hidden features, and the possibility to investigate the issues in-depth (Whipp 1998, p. 56) make it the preferred approach for this particular research problem. For example, the theoretical framework might hold value in other research contexts, whilst the empirical findings could be useful for policy making (Marshall & Rossman 2011, p. 137).

This research needs to ensure its dependability, whereby dependability “is concerned with the stability of the data over time” (Guba & Lincoln 1989, p. 242). Marshall and Rossman (2011, p. 253) argue that the dependability can be increased by discussing “the ways by which the researcher plans to account for changing conditions in the phenomenon chosen for study and changes in the design created by increasingly refined understanding of the setting.” As discussed below, this research went from a multi to a single industry study. Marshall and Rossman (2011, p. 253) further explain that: “Positivist notions of reliability assume an unchanging universe where inquiry could, quite logically, be replicated. This assumption of an unchanging social world is in
direct contrast with the qualitative / interpretative assumption that the social world is always being constructed and the concept of replication is itself problematic.” The capacity to replicate this research is further hindered by the time specific nature of the research. The research problem at hand could only be investigated at this particular moment in time when the SIAs were being phased out. The dependability is, however, ensured through triangulation, including the integration of secondary data sources.

The last trustworthiness criteria is confirmability, it “is concerned with assuring that the data, interpretation and outcomes of inquiries are rooted in context and persons apart from the researcher and are not simply figments of the researchers’ imagination” (Guba & Lincoln 1989, pp. 242-243). This research therefore heavily relies on triangulation from secondary sources to demonstrate the confirmability of the findings and ensure its trustworthiness (Marshall & Rossman 2011, p. 253). The data analysis techniques, described below, on the other hand help to clarify how the findings have been derived. Furthermore, it is indicated throughout the result chapters how the findings have been constructed.

In this research triangulation can be found when secondary data sources are used to confirm ‘claims’ from the various interviewees, as the interviewees responses cannot be taken at face value. In a number of instances it was also possible to triangulate between different interviewees because of the overlapping involvement in particular situations and/or organisations. Triangulation is, however, more than using multiple sources of information. It is just as much about depicting and addressing the various perspectives held by participants (Marshall & Rossman 2011, p. 254). Thus on the one hand triangulation is “using multiple perceptions to clarify meaning, verifying the repeatability of an observation or interpretation” and on the other hand it is to “clarify the meaning by identifying different ways the phenomenon is being seen” (Stake 2000, pp. 443-444).

4.2.4 Ethics in this research
Ethical considerations are an important aspect of all the various phases of a qualitative study (Creswell 2013, p. 56). Since the primary data for this project was collected through interviews the research required ethics approval from the university’s Human
Research Ethics Office (Appendix 4.1) which follows the guidelines from the National Statement on Ethical Conduct in Human Research.

In this particular research the ethical considerations of the research meant that interviewees only participated on the basis of anonymity and that neither they nor their organisations would be identifiable. Interviewees also had the right to withdraw at any time throughout the research without reason and without prejudice. None of the interviewees sought to do this. Furthermore, all gathered information was stored in secure locations; digital files were stored on password secured servers and devices, and hard copy material was kept in secured storage.

4.3 The Emergent Research Design

This research has been the result of an emergent design. In this section it is described how the research evolved from its proposed multi-industry design into a single industry case study.

4.3.1 From the proposed to the actual research design

The research was originally proposed as a multi-industry case study with the objective of comparing the experiences of the removal of the SIAs across and within different industries in WA, being: the mining, construction, and hospitality industries. These industries were selected as all could be described as major users of SIAs. It has further been documented that the mining and hospitality industries had varying rationales for SIAs (Chapter 1), whilst the construction industry was of interest as it appeared to be another major user of the agreements in WA (Fair Employment Advocate 2007).

A number of issues that were identified after the first round of industry interviews – predominantly around access and confidentiality – required the reshaping of the research into a single industry study. In this first round the data collection deliberately took a wider scope to verify utilisation of SIAs in the aforementioned industries, as well as to confirm that other useful industries weren’t overlooked. Therefore industry actors – employer association representatives, trade unionists, labour lawyers, and HR/ER consultants – were interviewed who had involvement in the resources industries (including mining), telecommunication, construction, manufacturing, retail, hospitality, utilities, property and business services, transport and local government.
These industries were explored as all, to varying degrees, used SIAs (Fair Employment Advocate 2007).

The objective of the first phase of the project was to assess whether the preliminary choice of industries was warranted and whether access to management at the enterprise level was going to be feasible. Since the available statistics on SIAs have been problematic the industry expert interviews provided relevant insight as to the relevance of SIAs for the varying industries as well as offered a preliminary indication as to what had been unfolding since the removal of the SIAs.

In this first phase of the data collection, during the period May – August 2012, 24 industry experts were interviewed: six employer association representatives, 14 trade union officials, and four ER consultants and labour lawyers. Interviews were held in the Perth Metropolitan area. These preliminary findings of the project have been documented in Veen (2013). It was identified during these first interviews that the capacity to conduct the originally proposed multi-industry case study was going to be problematic due to issues with identifying organisations outside the mining industry. Issues emerged in relation to confidentiality, sensitivity of the topic and lack of organisational knowledge.

In the attempts to promote the research and attract prospective participants it was experienced that the industry experts were reluctant and/or unable to assist in identifying organisations that used SIAs or referring to individuals who had been involved with the agreements. This was partly due to sensitivity of the topic as well as because of confidentiality issues, which possibly penalised the disclosure of parties that used SIAs. There was the risk of imprisonment for up to six months for people disclosing without consent whether a person had been party to an AWA (WRA 1996 s165). A number of the employer association representatives (EAR01, EAR02, EAR03) were reluctant to disclose which member organisations had used the SIAs, while also the unions weren’t too forthcoming with possible leads. Furthermore, where employer association interviewees (EAR06) attempted to assist this research by requesting their members to participate, the response from their members was that they were unwilling to participate. It became apparent that the focus of the research project was approached by some with a degree of suspicion, or at least restraint. This was reflected
in one response received from an employer association with respect to a request to circulate a notification seeking participants. In the response they indicated that the association’s members wouldn’t appreciate the focus of the research, and were likely to treat it with suspicion.

Interviewees’ knowledge of where the SIAs were used was a further issue that was encountered. Interviewees in some instances didn’t know which organisations in their respective industry had used the agreements (EAR05, TU10). Others only indicated one or two organisations – usually well-known users – of the agreements in their respective industry (TU04, TU07, TU12, TU13, TU14). Thus industry experts were of limited use in identifying organisations that used SIAs.

In the services sector, especially hospitality, additional problems emerged relating to turnover of the organisations’ HR management. It proved particularly difficult to find suitable ER/HR managers for interviews. For example, an interviewee (EAR04) identified multiple organisations as having used SIAs but subsequently it was found that the organisations either had ceased trading or had been sold. New management, when contacted, argued it was unaware of the past ER practices.

Likewise organisational knowledge in other smaller to medium sized organisations that were identified as ‘SIA users’ was a major issue. In one instance I identified an organisation as a possible SIA user on the basis of the content of their ECA. When the organisation was contacted, however, it could not retrieve information regarding its industrial agreement making history. The relevant director stated in our correspondence that the reason for the lost organisational knowledge was that “almost none of the staff were around prior to 2009 and certainly no HR staff” [e-mail 26-06-2013].

The issue with the construction industry was that the available statistics (Fair Employment Advocate 2007) presented an inflated number of SIAs in the industry, thereby overstating the agreements’ importance. This was caused by the project nature of this industry. SIAs were used for projects and as people were moved from project to project they would sign new agreements thereby inflating the number of agreements (EAR01, EAR03). Where there was a substantial uptake of the SIAs in the construction industry, this was predominantly in relation to the development of
resources/mining projects. In terms of award coverage the related activities of the construction industry, however, fall under the mining industry (Modern Mining Award Clause 4.2). In some respects, like the ER management practices, this part of the construction industry is thus more closely associated with the mining industry than with the other sections of the construction industry.

Another issue encountered in relation to identifying suitable organisations for the enterprise level management interviews was that the legislative confidentiality provisions in relation to the AWAs and ITEAs also still prevented relevant institutions, such as the Fair Work Commission (FWC) and the Fair Work Ombudsman (FWO), from disclosing which organisations had been using the SIAs. It was inquired with these relevant institutions whether they could be of assistance to the research. Despite the removal of the agreements, however, these confidentiality provisions remained in place. Hence they could not disclose SIA users.

4.3.2 From a multi to a single industry case study

Due to the difficulties in relation to identifying organisations that used SIAs across the varying industries in WA, as well as the high uptake of SIAs in the mining industry, it was decided for the second phase of the project – for the enterprise level interviews with managers – to focus the research on the mining industry. In the mining industry several substantial users of the agreements were identified, whilst also the relatively high uptake of the agreements in the industry meant that the chances of finding additional organisations that used SIAs were higher.

It was thus decided to opt for the ‘purposeful sampling’ of the WA mining industry (Patton 2002, pp. 45-46), whilst simultaneously adopting a form of ‘opportunistic’ sampling (Creswell 2013, p. 158) by interviewing all individuals that I came across with involvement in SIAs with organisations operating in WA. This approach was adopted because of the concerns that the industry experts expressed with the researcher’s capacity to recruit participants at the enterprise level, the problems encountered in mapping organisations that used SIAs, and the unreliability of the statistics. Thus besides the purposeful sampling from the mining industry it was decided to follow-up on every possible ‘lead’. This thus explains the sample of interviews as shown in Appendix 4.2.
Given the distinctiveness of the mining industry it was decided to reshape the study into a single industry case study. After the data collection was completed and a preliminary data analysis was conducted it was decided to omit the responses from those managers outside of the mining industry from the scope of this thesis. Because of the representativeness of the mining industry sample and the limited depth of the other sections of the WA economy it was decided to centre this thesis on this one industry.

4.4 Data Collection

The data collection took much longer and was much more difficult than anticipated. Therefore I will detail the steps taken to obtain the interviews and the strategies applied to elicit participants. The data collection process in this research reflects some of the ‘messiness’ in ER qualitative research methods as described by the accounts in Townsend and Burgess (2009). This was largely due to the confidentiality of the SIAs which complicated the process of identifying the organisations that used the agreements. Also in a number of instances individuals were unwilling to discuss their organisation’s involvement with SIAs for reasons that appeared to be associated with the controversy of the SIAs. Quite defensive reactions were experienced, for example, during cold calling attempts, two situations in particular stood out.

Again, some of those contacted displayed concern about the sensitivity of the topic. One individual who was identified via a newspaper search indicated that they had unwillingly been involved with the SIAs because of their direct superior’s orders. This individual pleaded not to contact the organisation again regarding this subject, and seemed quite distressed when asked about the subject. In another instance an individual who was initially enthusiastic to participate in the research wanted to verify with his direct superior – the CEO of the organisations – whether this was permissible. The individual was advised to seek advice from the internal legal team, who then informed the individual that participation might jeopardise the individual’s ongoing employment. These and other reactions highlight some of the sensitivities that existed.

4.4.1 Participant recruitment strategies for management interviews

A number of different – formal and informal – participant recruitment strategies were used in order to recruit participants for the enterprise level interviews. Because of the
complexities in mapping organisations that used SIAs both ‘pull’ and ‘push’ strategies were used in order to recruit participants. The success rates of the various strategies differed, as outlined below.

4.4.1.1 LinkedIn

One of the participant recruitment methods was the utilisation of ‘social media’, more specifically LinkedIn\(^8\). The groups function of this platform\(^9\) was used to promote the research by posting the notification shown in Figure 4.1. Notifications were posted in five groups in which it was identified that a substantial number of the members were involved with HR/ER in WA (AHRI Employee Relations/Industrial Relations Network; Industrial Relations Society of Western Australia; Australian Industrial Relations; Employee relations; Labor & Industry Relations). The notification directed interested participants to a site with further information on the project (Appendix 4.3), and allowed them to leave their contact details. This approach resulted in three participants, two of whom were directly involved in the ER management of organisations in the WA mining industry (Appendix 4.2). This participant recruitment method was deployed from November 2012 till January 2013.

**Figure 4.1 Participant recruitment notification used in LinkedIn Groups**

<table>
<thead>
<tr>
<th>Are you an HR/ER professional experienced with AWAs &amp; ITEAs in Western Australia?</th>
</tr>
</thead>
<tbody>
<tr>
<td>The UWA Business School is conducting research on the post-AWA era and is looking for HR/ER professionals who have been involved with the agreements. In order to participate in the research please contact Alex Veen directly at <a href="mailto:alex.veen@uwa.edu.au">alex.veen@uwa.edu.au</a> or click at the link below for further information.</td>
</tr>
</tbody>
</table>

4.4.1.2 Promotion of research by employer associations

Another method that was attempted to attract participants was the distribution of a notification of the research through various employer associations. Three individuals within WA based employer organisations distributed information on the research to members (for notification see Appendix 4.4). This, however, did not result in any participants.

\(^8\) [http://www.linkedin.com](http://www.linkedin.com) which operates as a network platform for professionals

\(^9\) [http://press.linkedin.com/about](http://press.linkedin.com/about)
The Australian Mines and Metals Association (AMMA) further promoted the research amongst its members in one of its newsletters (Appendix 4.4). Although no one directly contacted me after the newsletter was distributed, when individuals in the industry were later contacted during ‘cold calling’ a few remarked they had seen the notification in the newsletter, so it could be argued that it perhaps provided some “legitimacy”, albeit this being purely speculative. These participant recruitment strategies were used in the period November 2012 – January 2013.

4.4.1.3 Professional and personal networks

Professional and personal networks were also used to find suitable participants. A number of friends offered to assist me by introducing me to contacts from their professional networks. This resulted in four interviews. Through my own professional network a similar number of participants were recruited. It further should be noted that through the professional network of one of my supervisors seven interviews were arranged. It was also attempted through the professional ER association to recruit participants. Although substantial support was received from a number of individuals in this association, this did not result in any further interviews.

4.4.1.4 Cold calling

Interviews were also actively pursued through cold-calling techniques. Organisations were identified because they were mentioned in existing academic, industry, or Office of the Employment Advocate material. In addition, organisations were identified through newspaper archives, including Factiva10 and Workplace Express11.

Membership lists of the relevant employer associations and the WA book of lists12 provided further lists of organisations which were part of the mining industry. Organisations were also identified as SIA users through public LinkedIn profiles on which current and former employees of organisations in the WA mining industry stated that they in their roles had been actively involved with AWAs and/or ITEAs.

Also a list of collective agreements that was provided by the Department of Education, Employment and Workplace Relations (DEEWR) towards the end of March 2013 was analysed to identify possible SIA users. It was evident around that time of the research

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10 http://www.factiva.com
11 http://www.workplaceexpress.com.au
that a considerable number of organisations in WA had utilised non-union Employee Collective Agreements (ECAs) as a mechanism to mitigate the removal of the SIAs. The list provided by DEEWR showed the uptake of the ECAs in the transitional period 2007-2009, and included those agreements whose scope included Western Australia. Where there were large discrepancies between the number of employees covered by the ECA and the successor and/or predecessor agreement(s) this could be a seen as a possible indication of SIAs. These organisations were then contacted. Also those organisations where no predecessor agreements could be identified were investigated. Although this was somewhat of an unwieldy exercise, it provided a number of useful leads and resulted in four interviews.

4.4.1.5 Snowball sampling
Snowball sampling was another participant recruitment strategy that was successfully used (Biernacki & Waldorf 1981). Eighteen participants were recruited through snowball sampling techniques (Appendix 4.2). At the end of interviews, interviewees were asked whether they could recommend any other individual who could contribute to this research. In two instances it was found that the referred individual did not work for an organisation that used SIAs. Both, however, still provided valuable insights into the use and replacement of the SIAs in their respective parts of the industry.

4.4.2 The interviews
The primary data collected in this research have been obtained through in-depth semi-structured interviews. This particular type of interview was chosen as it permits the researcher to address a specific topic whilst at the same time providing the flexibility to follow-up on interesting matters arising during the interview (Corbetta 2003; Legard, Keegan & Ward 2003). The interview schedules used for these interviews (Appendix 4.5) were thus primarily a guideline. The semi-structured approach also permitted interviewees to elaborate on those matters that they deemed relevant.

The interview schedules were developed on the basis of the research question and were further informed by the theoretical framework and the existing literature on both SIAs and the WA mining industry. The existing literature on SIAs provided the specific details of the questions, like for example in relation to the content of the industrial agreements by identifying specific procedural and substantive matters that
were of relevance to the initial use of the SIAs. It further emphasized the need to gain an understanding of the rationale for the agreements as this had implications for how they were being used by the organisations. Moreover, the literature on the mining industry revealed the need to gain an adequate understanding of the context in which this research was taking place. Because of the theoretical framework the focus of the questions was on the strategic choices made by management; the agreement making and bargaining processes; the substantive and procedural terms of the industrial instruments; changes in the social contract between the parties; and the implications for the organisations’ day-to-day workplace practices and management.

The first and second phases of the data collection resulted in a total of 65 interviewees spread over 62 interviews from the period May 2012 till August 2013, which included one set of written responses that was received from a resources contractor – which was the organisation’s preference. A cross-section of industry and workplace experts were interviewed as set out below in Table 4.3 (detailed in Appendix 4.2). The interviews were undertaken at those places where the interviewees felt comfortable, most often in the interviewees’ offices although in a number of instances interviewees preferred coffee shops.

<table>
<thead>
<tr>
<th>Role</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>HR/ER Managers</td>
<td>34</td>
</tr>
<tr>
<td>Employer Association Representatives</td>
<td>9</td>
</tr>
<tr>
<td>External Advisors</td>
<td>8</td>
</tr>
<tr>
<td>Trade Unionists</td>
<td>14</td>
</tr>
</tbody>
</table>

Fifty-one interviews were conducted face-to-face and 10 over the telephone. The interviews were recorded and transcribed in 39 instances, one interview was only partly recorded and notes were taken, and during 21 interviews only notes were taken.

In the second phase of the research HR/ER managerial employees from 30 organisations that operate in WA were interviewed. The interviewees were drawn from 12 mining companies (MCs) (one didn’t utilise SIAs but operated on a common
law regime instead), 13 resources contractors\textsuperscript{13} (RCs), two education providers, one construction company (no SIAs), one construction contractor, and one logistics company. Except for the two mentioned organisations all had varying degrees of SIAs at different stages in their organisations. One mining company (MC8) for example had used WPAs after which a transition to common law agreements had taken place rather than a continuation on SIAs. A number of the interviews from the first phase data collection also were involved with the WA mining industry, as shown in Table 4.4.

Table 4.4 Role of those interviewees with direct involvement in the WA Mining Industry

<table>
<thead>
<tr>
<th>Role</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>HR/ER Managers</td>
<td>29</td>
</tr>
<tr>
<td>Employer Association Representatives</td>
<td>3</td>
</tr>
<tr>
<td>External Advisors</td>
<td>6</td>
</tr>
<tr>
<td>Trade Unionists</td>
<td>7</td>
</tr>
</tbody>
</table>

Of the managerial interviewees shown in Table 4.4 28 of them were directly involved in the ER/HR management of organisations in the WA mining industry that used SIAs – one was from an organisation that didn’t utilise SIAs but operated on common law contracts instead. In a number of instances multiple interviewees from the same organisation were recruited (see Appendix 4.2). In some instances they were not aware of each other’s participation (RC1), whereas in others this was the result of joint interviews (MC1, MC5) or referrals (MC1).

Although not reflected in the data, it became apparent that several of the mining industry interviewees had shared experiences through their previous employment at other organisations. They further had been involved in the same industry bodies, or had been in direct contact with each other through their current or past roles. This further enabled triangulation, particularly when historical events were discussed. It is noteworthy that there was a high level of consistency between these varying accounts (not only between managers, but also with the industry experts including employer association representatives and trade unionists).

\textsuperscript{13} The term resources contractor is used as these organisations besides the mining industry also commonly provided services to the oil & gas sector as well.
4.4.3 Secondary data sources

The case study approach allows for the integration of primary interview data and secondary data (Creswell 2013; Yin 2014). Therefore in this research, besides the interview transcripts, a number of secondary data sources were utilised. Information was derived from the academic literature, newspapers, industry reports, government reports, Australian Bureau of Statistics and DEEWR statistics; company documentation (where provided), court and tribunal documents (including verdicts and affidavits), publicly available industrial agreements, and anonymised SIAs provided by the Fair Work Commission.

It has to be stressed, however, that only limited access to organisations’ SIAs was provided, and hence the findings are on the basis of the interviewee responses and what could be verified through the other secondary sources, such as a sample of anonymized SIAs from the mining industry. Three example SIAs from the mining industry can be found in Appendix 4.7 for illustration purposes, these reflect the nature of their content.\textsuperscript{14}

4.4.4 Characteristics of mining organisations included in the research

The enterprise level managerial interviewees were drawn from a cross-section of the industry. A distinction between those interviewees from mining companies and the resources contractors was made as this reflects the differences in the nature of the operations of these organisations.

The mining organisations ranged from large multinational mining conglomerates to smaller independent owner operator mines. Their operations included the excavation and extraction of commodities including bauxite, coal, gold, iron ore, manganese, nickel and others. As flagged in Chapter 3, the bauxite operator didn’t use SIAs and in coal they were used for ‘staff’ rather than ‘wages’ employees.

\textsuperscript{14} Initial requests for sample AWAs & ITEAs were sent to FWA in July 2012. Initially Fair Work Commission (FWC) argued that the ownership of these legacy documents laid with the Fair Work Ombudsman (FWO). The FWO took until November 2012 to respond and counter-argue that responsibility was held by FWC. In December 2012 FWC sent 3 discs of anonymized AWAs & ITEAs covering 3 time periods. A first one covering the Work Choices period 2004-01-01 till 2007-04-30, a second for the fairness test period 2007-05-07 till 2008-03-27, and a third one covering ITEAs from 2008-03-28 till 31-08-2008. The first (Work Choices) and third (ITEAs) periods were categorized per industry allowing researchers to look into SIA arrangements in specific sectors.
The contractors covered a wide array of services delivered to the resources industries ranging from highly specialised technical engineering to labour supply, as well as exploration, blasting, maintenance, underground operations, transport solutions, and housekeeping services for remote camps. They also represented different parts of the supply chain including first and lower tier contractors. The sample of mining companies and resources contractors was somewhat skewed towards the larger organisations in the industry, as reflected in Table 4.5.

Table 4.5 Mining industry organisations in the study

<table>
<thead>
<tr>
<th># Employees in WA Operations in 2014</th>
<th>Miners</th>
<th>Contractors</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-500</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>500-1,000</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>1,000-5,000</td>
<td>7</td>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td>5,000-10,000</td>
<td>0</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>10,000+</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
</tbody>
</table>

Based on Business News WA\(^\text{15}\), Company 360\(^\text{16}\), IBIS World\(^\text{17}\), and company websites

4.5 Data Analysis

This section outlines how the collected primary and secondary data in this project were analysed. It first discusses the coding and analysis of the interview transcripts in NVIVO. Secondly, it addresses the thematic analysis that is used to generate themes out of the data. Thirdly, the extensive analysis of documents that occurred are explained.

4.5.1 Coding the data with NVIVO

The interview transcripts were coded and analysed using NVIVO software. The software facilitates the coding of the data, the management of files, and permits tests – like text searches – to be performed. The NVIVO qualitative software, however, does not conduct the analysis for the researcher (Patton 2002, pp. 442-443). The researcher thus manually has to code the data, as well as generate the themes.

In this research the data was coded in two phases. After the first phase of the industry expert interviews, these interview transcripts were coded and analysed. The coding created in this research used elements of an inductive approach, in that no codes were developed until the data was collected (Basit 2003, p. 145). At the same time,

\(^\text{15}\) http://www.businessnews.com.au
\(^\text{16}\) http://www.company360.com.au
\(^\text{17}\) http://www.ibisworld.com.au
however, the literature review and existing knowledge informed the coding scheme. The development of the coding in this way is in line with the non-linear character of qualitative analysis (Fereday & Muir-Cochrane 2006, p. 4).

For the second phase of the data collection a similar process was undertaken. Rather than using the coding from the first phase, it was again developed from scratch. In total over a 1000 nodes were created for this project. Tree maps of the nodes, and the applied hierarchy, can be found in Appendix 4.6. As is evident from these tree maps, and which will be reflected in the results chapters, agreement making, legislative matters, and the mining industry featured prominently as themes in the coding of the interviews.

The coding process in both sets of interviews was an iterative process, whereby data was re-coded as more ‘nodes’ were created. Although there was a possibility of integrating the data sets it was decided to keep them separate as the first phase data set clearly had much more of an industry focus, whilst the second phase data was more enterprise level oriented.

4.5.2 Thematic analysis of interview transcripts
The codes of the interviews were hierarchically structured, organised and re-organised so that themes emerged out of the data (Creswell 2013, p. 186). In qualitative thematic analysis a researcher moves back and forth between the data to unveil emerging themes. When themes are discovered the data is further explored, thus there are iterative steps between developing the themes and moving back and forth between the coding of the data until a point of saturation is reached. The thematic analysis in this research relied on a “hybrid” method in that it was reflective of both inductive and deductive coding strategies (Fereday & Muir-Cochrane 2006, p. 4).

Boyatzis (1998) explains that the objective of thematic analysis is to construct patterns out of rich qualitative data. Furthermore, the thematic analysis is a sense-making activity that fits with this research’s epistemological position (Braun & Clarke 2006, p. 81). Besides its relative ease to use, the other benefits are the approach’s flexibility and its capacity to utilise the richness of qualitative data which results in ‘thick descriptions’. Thematic analysis further helps to identify similarities and differences
within the data and allows the development of qualitative analyses with merits for policy development (Braun & Clarke 2006, p. 97).

4.5.3 Document analysis

Besides using secondary data for the purpose of triangulation, this research also conducted in-depth document analysis to unveil further findings. The advantage of using this secondary data is that it is “material that provides information on a given social phenomenon and which exists independently of the researcher’s actions” (Corbetta 2003, p. 287). This material further allows a researcher to study the present and/or past of such a social phenomenon. A further advantage of document analysis is that the information obtained from document analysis is non-reactive, i.e. not affected by the interaction between the researcher and participant – although recognising it may still contain biases (Corbetta 2003, p. 287).

This study relied on institutional documents like newspaper articles, judicial documents, political documents, business documents, and relevant industry and department documentation (Corbetta 2003, pp. 296-303). Despite the fact that some of these institutional documents are politicised and serve the interest of those who produce them, as Corbetta (2003, p. 307) explains “such documents represent an irreplaceable source of empirical material for the study of contemporary society (much as documents of the past are precious for historical research)”. Thus besides helping to triangulate the findings from the primary data collection, the document analysis provides further insight as to what the managerial (strategic) choices were. It informs the context in which the research took place and shows what some of the implications of the removal of the SIAs were for the WA mining industry.

As will be reflected in the results chapters, intensive document analysis was in particular conducted on the industrial agreements of organisations operating in the WA mining industry. Similar to Roan, Bramble and Lafferty (2001) and Mitchell and Fetter (2003), content analysis of subsequent industrial instruments was conducted. Gollan and Hamberger’s (2003) criticism of these content analyses were taken into consideration. The analysis provides valuable insight as to how the content of the industrial instruments changes with the regulatory changes and helps to identify where there are constraints placed upon organisational flexibilities by this external
regulation. Apart from providing further detail, the content analysis of industrial agreements in this research helped to verify and illustrate the changes that interviewees described, thus assisting in triangulation.

**Conclusion**

The relativist ontological and constructivist epistemological standpoint inform the chosen methodological approach to investigate this research on managerial strategic choices and organisational consequences of the removal of the SIAs in the WA mining industry. The emergent design of this study into a qualitative single industry case study was partly the result of issues experienced in the data collection process. It was argued that the sections of the WA mining industry that used SIAs meet the criteria for a ‘bounded system’ and therefore warranted the applied case study approach. The original primary data in this research was collected through semi-structured interviews. These were conducted in two phases, with a focus on the industry and enterprise level. The research also makes substantial use of secondary data sources, particularly institutional documents. The findings of this research were derived through thematic analysis of data, as well as extensive document analysis.
Chapter 5 – SIAs in the WA Mining Industry

Introduction

“The key to AWAs was control” (Trade Unionist TU08)

This chapter is the first of three results chapters presenting the findings of this research. This one will focus on the period of the *Workplace Relations Act 1996*, including the *Work Choices amendments 2005*, when SIAs were implemented by the organisations (left hand side Figure 5.1). The following two will discuss the management responses to the removal of the agreements from the ER regulatory system.

**Figure 5.1 Overview of successive federal ER regulatory regimes in relation to SIAs**

This chapter illustrates why and how SIAs were used in the researched organisations in the WA mining industry. The chapter shows that organisations overwhelmingly used the SIAs to implement their preferred ER/HR arrangements, which were fairly consistent across the industry. The rationale and use of the agreements inform the management responses that were made when the agreements were removed from the ER regulatory system.

The industry’s preferred workplace relations models favoured internal over external forms of regulation. The preferred arrangements further included enhanced managerial prerogative and control, which in turn provided the organisations with increased – almost unfettered – flexibility. Direct relations with the employees were considered to be another important element of these arrangements, which meant that the involvement of unions and other third parties, such as the Commission, was minimised. Management sought to embed these preferred workplace relations in their
organisational cultures through various mechanisms such as individual performance management systems (IPMS). Management considered SIAs therefore to be an important instrument to implement change. Another important consideration for the use of SIAs was that organisations enjoyed high levels of industrial certainty because it reduced the employees’ ability to collective undertake protected industrial action, i.e. no strikes.

In this chapter first the influence of the WA context on the use of SIAs is discussed. Then the chapter presents a summary of the rationale for taking-up the SIAs by the researched organisations, this is followed by how management used the agreements.

5.1 SIA Making in WA Mining Industry – The Historical Context

“That is why AWAs in Western Australia had a higher take-up than in other states because we had already had the West Australian Workplace Agreements, right.” (Employer Association Representative EAR06)

SIAs were an integral part of the WA mining industry’s preferred ER/HR arrangements for over two decades. During the interviews it was apparent that, at least from the interviewees’ perspectives, it was relevant that the option of SIAs already existed under the WA state system. Management of eight of the 24 organisations, for example, indicated that their organisations had a history of using Western Australian Workplace Agreements (WPAs) prior to switching to the federal Australian Workplace Agreements (AWAs) (Mining Company MC1, MC3, MC6, MC9, MC12, Resources Contractor RC4, RC9, RC12). These organisations responded to the WA government’s replacement of the WPAs with the more restricted EEAs by leapfrogging to the federal ER regulatory system to take up AWAs instead, thereby preserving what they had been able to implement. One of the consequences of this managerial choice, as one of the interviewees (Manager MN04) pointed out, is that some businesses in WA have always operated on SIAs, which further helps to understand their responses towards the removal of the SIAs from the federal regulatory ER system.

“If you go back to the workplace agreements, the state system, from a user friendly point of view was far better than the AWA system. It suffered from the problem that there was no no-disadvantage test and that basically spelled the end of it.” (EAR03)
The time lapse between when the WPAs were used and when the interviews for this research was conducted impacted on the interviewees’ responses in relation to the WPAs. In some instances the organisational knowledge was no longer available, some businesses didn’t exist at the time of the WPAs (MC11), whilst others have always operated under the federal ER regulatory system (MC4). SIAs were, however, a preferred industrial instrument for a prolonged period for the majority of organisations in the research sample from the WA mining industry. This prolonged reliance on SIAs by organisations in the WA mining industry partly helps to explain why there was an entrenched culture of SIA making.

5.2 The SIAs Rationale – The Industry’s Preferred ER/HR arrangements

The rationale for the SIAs was an important determinant for how they were being used, what their content looked like, and how their introduction affected day-to-day workplace practices. It is therefore important to establish what the rationale to utilise SIAs was for organisations in the WA mining industry.

In the interviews managers stated multiple reasons for SIAs which were often intertwined and that were all reflective of the preferred workplace relations for their organisations. Although the stated rationales of the interviewees can be largely encapsulated under the need for greater managerial prerogative and control, a more detailed discussion of the various rationales is informative. Table 5.1 below depicts the reasons as they were articulated by the interviewees. The table reflects not only the rationale as directly stated by interviewees, but also includes what could be inferred to be further managerial motivations for the utilisation of the agreements from the ensuing discussions.
Table 5.1 Rationales for the introduction of SIAs presented by interviewees

<table>
<thead>
<tr>
<th>Rationale</th>
<th>Stated by # Interviewees (n= 29)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial Relations Matters</td>
<td></td>
</tr>
<tr>
<td>Industrial risk and certainty</td>
<td>7</td>
</tr>
<tr>
<td>De-unionisations and union avoidance</td>
<td>7</td>
</tr>
<tr>
<td>Avoidance of collective bargaining</td>
<td>2</td>
</tr>
<tr>
<td>Separate or vary from awards</td>
<td>5</td>
</tr>
<tr>
<td>Operational</td>
<td></td>
</tr>
<tr>
<td>Increased operational flexibility</td>
<td>7</td>
</tr>
<tr>
<td>Change remuneration structures</td>
<td>8</td>
</tr>
<tr>
<td>Labour cost certainty</td>
<td>3</td>
</tr>
<tr>
<td>Organisational Culture</td>
<td></td>
</tr>
<tr>
<td>Change or establish preferred culture</td>
<td>7</td>
</tr>
<tr>
<td>Employee preference</td>
<td>1</td>
</tr>
<tr>
<td>External Factors</td>
<td></td>
</tr>
<tr>
<td>Client preferences or requirements</td>
<td>6 (all contractors)</td>
</tr>
<tr>
<td>Competitive pressures</td>
<td>3</td>
</tr>
<tr>
<td>Unknown</td>
<td>2</td>
</tr>
</tbody>
</table>

5.2.1 Industrial certainty
The SIAs were an ideal industrial instrument for the mining companies and contractors to secure industrial certainty and avoid the risk of being exposed to protected industrial action (Manager MN03, MN08, MN09, MN11, MN12, MN20, MN23, MN27, MN31, M32, MN34). This was an important finding with respect to the rationale for SIAs, which has been somewhat underemphasized previously. The employees’ ability to pursue a collective agreement was reduced because the expiry dates of SIAs could be staggered, which reduced the likelihood of the organisations being exposed to protected industrial action undertaken by employees in pursuit of a collective agreement.

5.2.2 Union related concerns
As the quotes below show, interviewees explained that the unions affected the extent and pace at which organisations could implement change and apply new technology. Increasing managerial prerogative and control was thus partly realised through the exclusion of unions from enterprise bargaining and workplace consultation. Besides
the cited preference for ‘direct employer-employee relations’, whereby management directly engages with employees in agreement making and workplace consultation without the involvement of “third parties” such as the Commission or unions, what becomes evident from the interviews (MN04, MN11, MN25, MN34) is that the capacity to curb the influence of trade unions was a key motivation for several organisations. The SIAs restricted the capacity of unions in four ways. Firstly, it removed the ability of unions to bargain collectively. One interviewee argued that:

“My personal view of it from what we were able to achieve, is it [SIAs] removed collective bargaining effectively. So when a new employee started they didn’t really have a choice. These are the terms and conditions they signed up to.” (MN32).

Secondly, it restricted union right of entry to sites, especially under the WRA 1996 including Work Choices Amendments. This meant that the unions’ ability to gain access to the workforce was curtailed, thereby affecting their capacity to recruit new members as well as build up militancy.

“The key one I mentioned earlier was an AWA gave employers protections against unions seeking access to their site. Under that regime you could deny a union access.” (MN26).

Thirdly, in some instances SIAs were further used to cover non-unionised sections of an organisation’s workforce despite engaging with unions in others. Organisations in the industry thus also used SIAs to prevent the spread of unionisation (MN13, MN20, MN30).

“If protected... once the agreements was signed... it gave some protection to the business in terms of them [the employees] forming a union.” (MN20).

Importantly interviewees (MN05, MN34) explained that where SIAs didn’t entirely replace collective bargaining, the threat of them, as a management tool, still had a substantial impact on the negotiation processes forcing the unions and employees into concession bargaining. All of these diminished the unions’ capacity to organise workers and bargain collectively.
Trade union officials (TU02, TU03, TU05, TU06, TU08, TU09) and some industry experts (EX03, EX04, EX07) were more inclined to describe the management drive to reduce union influence as ‘de-unionisation’. Managers, however, were less forthright. This can perhaps be explained by the legality of de-unionisation exercises:

“We never ever said to anybody ‘here is your AWA and our expectation now is that you won’t be a member of the union’. It was illegal to do that anyway, so you can’t do that.” (MN05).

The introduction of the SIAs tended to deliberately affect the labour-management social contract. In most instances the introduction of the SIAs shifted the agreement making process from the collective to the individual level. Some of the interviewees expressed dissatisfaction with collective bargaining as an agreement making process, experiencing frustration with the lack of speed of the process as well as the trade-offs required to achieve desired change.

“The unions’ philosophy was just to hold up any change. And they had the sort of cliché ‘nothing for nothing’. If you wanted to make any change, no matter how small, you had to pay something for it. And that just meant things went on and on trying to implement even the smallest technology change or work practice change.” (MN07)

“They [unions] were filling a power vacuum, they were a power unto themselves. But whilst it was always an idea to try and reduce their influence we didn’t really have this particular tool. The fact that you could pluck people out of the award system and put them into the staff system wasn’t available, not until we had the WAWAs [WPAs], the Western Australian Workplace Agreements, so our success was very very limited up until that point.” (EAR08)

Where union involvement in the workplaces was reduced it was in many cases argued to have been driven by a business case rather than an anti-union ideology (MN05, MN07, MN12, MN33, MN11, MN24). In some instances the union activities and negotiations were perceived to be detrimental to organisational goals and further limited flexibility, efficiency, and productivity. If the removal of union activities from
the mining sites was a side-effect of implementing SIA regimes it was, however, certainly not an outcome management were unhappy with, as the attitudes towards the re-emergence of union activity under the *Fair Work Act* will demonstrate. Whether or not it was an intentional rationale, a direct consequence of the introduction of SIAs was that most organisations ended up with limited or no union involvement, especially in relation to employees on SIAs.

5.2.3 The implementation of organisational change

Another stated reason for utilising SIAs was competitive pressure, as global competition in the industry pressured Australian organisations to become more efficient and productive. Management at the time viewed the SIAs as the only way to achieve the required organisational workplace change (MN33). Similarly it was explained that those organisations in the domestic industry that already used SIAs forced others to follow suit (MN01, MN05, MN07, MN14). The domestic competitive pressure arose out of the operational differences between those operating on SIAs compared to the ones that remained on union negotiated collective agreements (UCAs). A managerial interviewee explained that:

“You would have to go through exhaustive meetings, processes that would take a long long time. And meanwhile at [competitor], because of the introduction of individual contracts [they had] a lot of flexibility. They would sit down with groups of employees and say ‘well we would like to try doing something this way, doing it that way’ and they were implementing change a lot better. So in a business that amounts to profitability, dollars, and at the end of the day in running a more efficient business.” (MN07)

Thus the capacity to quickly respond to changing organisational and/or operational requirements was another motivation for the uptake of SIAs. Agreements were seen as a tool to implement increased operational flexibilities (MN05, MN07, MN08, MN11, MN31, MN33, EX08). The SIAs enabled organisations further to remove their award-covered workforces from the regulation of the award system – and some of its perceived restrictions – which enabled management to vary workplace practices and change the operations of their organisation (MN24, MN25, MN33, EAR08, EX08).
The SIAs were also used as a tool to change organisational cultures or to establish preferred ones, trying to align the goals of the organisation and its workforce (MN1, MN05, MN07, MN33). The organisations used the agreements predominantly for what they called their ‘blue collar employees’, ‘wages workforce’ or ‘award-covered employees’ (MN03, MN11, MN12, MN16, MN17, MN24, MN25, MN28, MN29, MN33, MN34, EX08). A number of managers (MN03, MN25, MN31, MN33) and industry experts (EAR08, EX03, EX04, EX09) explained that the organisations wanted to replace the ‘us’ and ‘them’ culture of adversarial relationships between management and the award-covered workforce with an ‘all staff’ culture. Thus the organisations were moving away from the distinction between ‘wages’ (award covered) and ‘staff’ (common law covered) workforces towards an ‘all staff’ environment.

Provisions that were previously available only for staff, such as family health care benefits or more generous employer super annuation contributions were made accessible to the entire workforce with the objective of aligning and unifying the parties to commit to the organisational goals. That the SIAs separated the employees from the award system was thus partly symbolic, and further it allowed management to introduce new remuneration structures as part of organisational change strategies, and increase remuneration flexibility.

5.2.4 Contractor motivations
Six of the 13 contractors stated that they adopted SIAs because of client pressures, a reflection of the fact that these mining companies’ preference for SIAs affected the contractors’ uptake of the agreements. Several interviewees (MN04, MN09, MN11, MN12, MN14, MN32, MN34) indicated that it was important for contractors to be aware of the preferences of their clients. As one interviewee expressed it:

“With AWAs, clients looked more favourably at you.” (MN04).

Another explained this in more detail:

“And the reason I guess... that [contractor] went down that path was perhaps twofold. One because it is seen as making good sense from a business perspective, but secondly, and probably at least equally important, our clients thought it was a good idea for us to have those sorts of regimes
in place. So our clients being people like [mining company], [gas company], or [mining company]... And so experience tells me that those companies identified that using AWAs was a good idea because it meant in effect that there was less likelihood of unions having access to the workplaces, and importantly it meant that employees of course could not take protected industrial action. So providing you had AWAs in place across the workforce, then effectively you would expect those major projects to proceed on the basis of little or no industrial activity, so they were the critical things that drove [resources contractor] to using AWAs.” (MN11)

These comments also illustrate that it was important for contractors to be able to guarantee industrial certainty to their clients, which included not being a threat to the continuity of supply or timely construction of a project, or being a vehicle for union access to a site (MN09, MN09, MN11, MN23, MN32, MN34). It was argued that during tenders the capacity of contractors to provide this industrial certainty was a critical factor in winning new work:

“The fact is that the prevailing practice on the site is to have them on AWAs which guaranteed no industrial action and those sorts of things in that era. So yeah, hence it is more what the market and the client was dictating than what we were consciously doing as a company... Look at the end of the day any company in this space is mindful when you are tendering for work. You got to be really mindful of the client’s attitude because if you are not aligned with them you are not going to get the work.” (MN09)

Contractors further looked at SIAs favourably from a business cost perspective since the agreements could provide labour cost certainty for the duration of a project (MN08, MN13, MN34). The agreements eliminated the risk of employees collectively pursuing wage increases and these increases being stipulated for longer periods of time. The example below, however, illustrates that cost certainty was only one of the multifaceted considerations for the utilisation of the agreements by these organisations.

“It was a multifaceted consideration, again client expectations, employee expectations, market conditions and in terms of again your IR risk profile. It
was not unlawful to make it a term of the offer of employment that it was subject to an AWA. Now of course that means circumstances where there was a significant cost pressure that you had some cost certainty, some price certainty around what you were offering.” (MN34)

The SIAs also enabled the contractors to work within narrow margins and price work competitively (MN08, MN14, MN34), thus ensuring that they were price competitive. Since SIAs regularly didn’t contain stipulated fixed annual wage increases, it also provided management with the flexibility to adjust the employees’ wage increases in line with changes in business performance and fluctuations in the (commodity) market(s). It was therefore convenient for management that SIAs allowed them to decide unilaterally whether or not to grant (annual) pay increases to employees (MN09, MN14).

What stands out from the interviews was, however, the ability of the client organisations to influence the instruments the contractors were using. The contractors in a number of instances only had a proportion of their workforce on SIA arrangements, depending on clients’ preferences. Alongside the SIAs the contractors (RC1, RC3, RC4, RC5, RC6, RC7, RC11, RC12, RC13) also used other instruments, in what some called a ‘horses for courses’ approach (EX07, MN13, MN18).

5.2.5 Conclusion

Overall business cases rather than anti-union ideology appeared to be driving employers’ rationale for the SIAs in the WA mining industry. Business cases to introduce SIAs included the desire to introduce new work patterns, like rosters and manning arrangements, variations from the award system, or changed remuneration structures, though union involvement in these organisations was reduced as a consequence. Whether all such instances should be categorized as de-unionization is debateable. The conducted interviews provide valuable insight into the linkages between management’s desire for SIAs, an organisation’s capacity to change, the capacity to remove (perceived) restrictive workplace practices, industrial certainty, and the degree of union involvement in organisations, which all could be brought together under the umbrella of managerial prerogative and control.
5.3 How SIAs Were Used

Having explained the motivation for SIAs, what happened in practice is also of relevance as it enabled the research to assess how the removal of the SIAs affected the organisations in the WA mining industry. The interviewees provided information on how the SIAs were introduced, what their content looked like, and what type of organisational flexibilities were achieved through their use.

5.3.1 The SIA offers – How SIAs were offered and how ‘individual’ they were

Management of a number of organisations indicated that they incentivised their SIA offers by providing additional benefits to employees who signed the agreements (MN05, MN07, MN13, MN33, EAR08, EX03). Trade union officials (TU08, TU09) argued that the unions would have never been able to achieve the wage increases that were granted to employees with the SIA offers. The SIA benefits included wage increases, generous health care provisions, housing benefits, as well as paying out accrued sick leave.

“When we rolled-out our West Australian workplace agreements and then AWAs we offered incentives for the individual agreements and there was [sic] only a handful of employees who decided not to take-up those individual agreements.” (MN12)

The roll-out of SIAs sometimes coincided with reductions in the size of the workforce of these organisations, thereby applying further pressure upon the employees to accept them.

Managers explained that their organisations didn’t tailor the content of SIAs on an individual basis (MN03, MN11, MN14, MN16, MN23, MN24, MN25, MN27, MN30, MN32, MN34, EAR08). The individual agreements were, in effect, a form of collective agreement making without a collective bargaining component. The majority of interviewees indicated that in their organisations the agreements were based on a template with a take-it-or-leave it approach, while the agreements were made as a pre-condition of employment for new employees (MN04, MN07, MN09, MN11, MN27, MN31, MN32, MN34, TU02). Several interviewees described their SIAs offer as non-

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18 EX03, EX04, EA08, EA09, MN03, MN11, MN14, MN16, MN23, MN24, MN25, MN27, MN32, MN34, TU02, TU03, TU05
negotiable (MN11, MN25, MN27, MN32). SIAs thus eliminated collective bargaining – in most instances any form of bargaining – and subsequently removed the capacity of the employees and their representatives to influence the content of the industrial instruments.

The fact that the content of SIAs wasn’t individualised, however, doesn’t necessarily mean that the contractual relationship wasn’t individualised, as some interviewees stressed (MN05, MN12, MN33). Individual variations could still be made through common law contracting on top of the SIAs, which some organisations indicated they did (MC1, MC3, MC12). Others indicated that depending on labour market pressures there was a degree of individualisation (RC1). In the period that SIAs were part of the regulatory system a pertained mining boom took place in WA. It is therefore unsurprising that individual employees in some instances had a degree of contractual power due to labour market shortages.

Individualisations are, however, not necessarily reflected in the content of SIAs, but are rather found in the common law contracts or regulated through internal company procedures, through for example individual performance management systems (IPMS). One interviewee, on the other hand, justified the lack of individualisation of the content of the SIAs by arguing that differentiating between individuals would create possible tensions within the workplace (MN28). Another manager (MN25) explained that individual bargaining only really happened at the senior management level, and went on to explain that in most instances these people weren’t covered by SIAs anyways.

### 5.3.2 SIAs offered increased organisational flexibilities

The SIAs in the WA mining industry enhanced managerial prerogative and control (MN05, MN08, MN11, MN12, EAR08, EX09 TU02, TU03, TU05), which management regards as important in the pursuit of greater workplace flexibility. The SIAs provided organisations in the WA mining industry with the opportunity to increase flexibility across a number of operational aspects, the various flexibilities that could be identified are outlined in Table 5.2.
Table 5.2 Definition of the flexibilities achieved for management through SIAs

<table>
<thead>
<tr>
<th>Flexibilities</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Functional</td>
<td>“how is labour used”</td>
</tr>
<tr>
<td>Numerical</td>
<td>“how much labour is used”</td>
</tr>
<tr>
<td>Spatial</td>
<td>“where can labour be used”</td>
</tr>
<tr>
<td>Temporal</td>
<td>“when can labour be used”</td>
</tr>
<tr>
<td>Technological</td>
<td>“what technology can labour be made to use”</td>
</tr>
<tr>
<td>Remuneration</td>
<td>“how is labour remunerated”</td>
</tr>
</tbody>
</table>

Based on Cooper et al. (2009) and Kuruvilla and Erickson (2002)

Although the above flexibilities are reflected in the content of the agreements, the content alone does not reveal the entire regulation of the employment relationship and thus should be treated somewhat carefully. What the content of the agreements in isolation does reveal is what forms of flexibility management was likely to achieve or which ones were restricted by the industrial instrument.

SIAs frequently referred matters to company policies and procedures (MN03, MN04, MN05, MN25, MN31, MN33, EAR02, EX03, EX04, TU02, TU03). The major benefit for organisations was that policies and procedures are adjustable, whereas if terms are written into industrial agreements – collective or individual – they are fixed unless varied by consent.

Functional flexibility was substantially enhanced through the use of SIAs, according to the interviewees (MN05, MN07, MN09, EX08). Assessment of some anonymous SIAs from the mining industry revealed the almost unfettered level of discretion management had over the allocation of duties with SIAs. Two examples of how SIAs regulated functional flexibility are shown in Figure 5.1.
The broad framing of the employee duties under SIAs was a deliberate choice to increase management’s discretion over the design of work (MN05, MN07, MN09, MN11, EAR08, EX08) and to remove what management perceived to be restrictive workplace practices.

Although interviewees placed less emphasis on numerical flexibility, the SIAs did enable organisations, particular the mining companies, to make greater use of contracting-out arrangements. Historically, according to some interviewees, such attempts by mining companies (MN01, MN05, MN07, MN20, EX08) were opposed under the collective bargaining regimes. On the other hand, several interviewees (MN02, MN04, MN08, MN23, MN24, MN32) indicated that SIAs didn’t necessarily offer any increase in numerical flexibility because of the administrative burden that was associated with lodging and registering them, which reduced the organisations’ capacity to use them as a quick remedy to adjust the size of their workforces.

The SIAs did provide for substantial spatial flexibility as to where work was being performed. The first sentence of the first employee duties example in Figure 5.1 states that “you may be required to carry out any work in any area of the operation” (emphasis added). Interviewees didn’t address spatial flexibility as an important form of flexibility in the interviews in relation to their preferred workplace relations, nonetheless it can be found in SIAs and successor agreements that frequently

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**Figure 5.2 Employee duties examples from mining industry SIAs sample**

**Example 1**
“you may be required to carry out any work in any area of the operation that is within your competence, subject to safety and statutory requirements. You may also be required to acquire new skills and undertake training as required to meet the needs of the business and you may be required to train others as directed”. WC Template Doc0455B.pdf

**Example 2**
a) You agree to perform all duties associated with your position to the best of your abilities as well as other duties that may be assigned to you from time to time.

b) You accept that your duties, role and level of responsibility may be varied throughout your employment and it is agreed that subject to any variations, the terms and conditions set out in this agreement will continue to apply unless otherwise agreed to by both parties and amended in writing. ITEAs Template Mining52.pdf
employees’ location of work could be changed at management’s discretion. In the case of contractors sometimes separate site SIAs existed. Employees were required to sign a new SIA when they transferred to a new site (MN02, MN04, MN11). In these instances the SIAs were thus site specific and therefore their spatial flexibility was limited.

Temporal flexibility was considered an important flexibility by management that was enhanced by SIAs (MN05, MN07, MN09, MN12, MN13, MN14, MN24, MN31, EX08). Interviewees, for example, claimed that SIAs had initially helped their organisations to overcome what they perceived to be outdated award provisions relating to rosters, rostering arrangements, and hours of work (MN24) and better fitted with Fly-In-Fly-Out (FIFO) and remote work rostering (MN09, MN32).

“AWAs gave us that flexibility in terms of removing any residual barrier of demarc [sic] between jobs and also gave us unfettered flexibility in terms of rostering and hours of work and making changes to peoples’ hours of work and rosters to suit the business.” (MN11)

The SIAs further provided management with the discretion to introduce new technology – technological flexibility – where desired without necessarily having to go through consultation, bargaining, or concession-making with the unions which enabled much swifter implementation of technological changes (MN01, MN07), as was explained in relation to the capacity to change particular contractors:

“As the mine becomes deeper and the mine becomes longer, you open new ore bodies, people come up with better ideas of how you can do things, you want to change work practices. And there are also technology changes. And one of the technology changes was in blasting where we needed a different type of explosive and we were being held up on that sort of change as well. And then another component is you tender a part of a contract, or in this case I am thinking of explosives again, there is two or three different suppliers and you want to change the contract or the contractor because of price reasons or technology reasons and that gets held up. And so all these things in the union world became extremely complicated.” (MN07)
Lastly, SIAs provided organisations with enhanced remuneration flexibility. The use of SIAs enabled greater flexibility for management in their choice of remuneration strategies and practices. The remuneration flexibilities were used to optimise and/or simplify the organisational pay structures in relation to operational considerations, whilst they were also frequently part of the desire to change organisational cultures. They enabled management to link remuneration to organisational and individual performance. Remuneration flexibility took a number of different forms in the WA mining industry which are depicted in Table 5.3.

<table>
<thead>
<tr>
<th>Remuneration Flexibility</th>
<th>Stated for # Companies (n= 29)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Miners</td>
</tr>
<tr>
<td>Annualised salaries</td>
<td>6</td>
</tr>
<tr>
<td>Flat hourly rates of pay</td>
<td>2</td>
</tr>
<tr>
<td>Cashing out of annual leave</td>
<td>0</td>
</tr>
<tr>
<td>Cashing out of other entitlements</td>
<td>0</td>
</tr>
<tr>
<td>Individual performance management system (IPMS)</td>
<td>7</td>
</tr>
<tr>
<td>No fixed annual increases</td>
<td>7</td>
</tr>
</tbody>
</table>

Table 5.3 reveals that the preferred remuneration options differed somewhat between the miners and the contractors. The mining companies tended to use the SIAs for annualised salaried arrangements, whereas the contractors more regularly used them for flat hourly rates of pay.

In some instances the move towards annual salaries has to be seen in conjunction with management’s objectives to change organisational cultures or move away from the traditional award structured remuneration systems towards ‘all staff arrangements’. Interviewees (MN08, MN16, MN25, MN34, EAR08, EX08) claimed that the award system contained some incentives for workers to work in a way that had the effect of reducing productivity and raising costs. For example:
“So there is your guaranteed base pay, if you like, but on top of that there are penalty rates, there are various allowances, well overtime of course was an encouragement not to try and do all your work in your allocated time but save some up, go slowly, do it on the weekend and get paid penalty rates and boost your income.” (EAR08)

Contractors preferred flat hourly rates (MN08, MN09, MN13, MN14, MN24, MN29, MN30, MN32, MN34), effectively removing any penalties, allowances, or loadings normally accrued for non-standard working hours, thereby enabling them to roster on the basis of operational requirements. This particular difference between the contractors and the mining companies can partly be attributed to their different roles in the supply chain, the type of work that is undertaken, as well as the characteristics of their workforces.

Interviewees claimed that another benefit of the annualised salaries and flat rates was their capacity to cash-out entitlements (MN08), especially annual leave (MN08, MN09, MN14, MN28, MN32, MN34). The cashing out of entitlements and annual leave enabled management to better cope with the requirements for rostering remote work (MN32) and resulted in increased cash in hand for some employees as certain non-monetary benefits were traded off for increased cash (MN08, MN28). The increased rostering capacity was achieved in certain instances as the organisations could roster according to operational needs, without having to take into consideration penalty rates and/or loadings that would have otherwise applied and possibly affected whether or not it was economical to work those hours. Managers (MN08, MN09, MN14, MN15) also suggested that employees sometimes benefited from the move to ‘all up’ rates or salaried arrangements as they suggested that it increased the employer’s superannuation contribution. Formerly loadings, allowances, and penalty rates were in most instances not attracting superannuation.

The replacement of fixed annual increases with discretionary annual reviews was another form of remuneration flexibility from managements’ perspective. According to interviewees this was an important part of organisations’ remuneration policies. Discretionary increases were common practice throughout the industry (MN07, MN09, MN12, MN16&17, MN14, MN25, MN28, MN29, MN30, MN31, MN33). It was argued
that one of the primary motivations for removing fixed annual increases from the industrial agreement were the fluctuations in commodity prices which impacted on business performance (MN08, MN16, MN25, EX08). These volatilities affected the demand and price for their services and/or products, and management therefore preferred to see annual increases linked to an individual’s and the company’s performance rather than having “fixed wage escalation” (MN31). This meant that labour costs were better linked to a company’s revenues and performance, which could also be linked to the individual performance management systems (IPMS).

The SIAs also provided enhanced remuneration flexibility for management through the introduction of IPMS (MN05, MN03, MN12, MN13, MN14, MN18, MN25, MN29, MN31, MN33). Through these systems management was able to introduce some level of individualisation in the employees’ remuneration and this enabled management to reward performance (and/or desirable behaviour). IPMS took several differing forms in the researched organisations. Some utilised a system of production bonuses (MN08, MN24, MN28) – especially in underground mining – and others used IPMS in a way in which it was more directly linked to organisational culture (MC1, MC2, MC3, MC11, MC12).

Conclusion

This chapter has outlined why managers in the WA mining industry introduced SIAs in the researched organisations and how these were used. The dominant rationale for introducing SIAs can be encapsulated under the guise of increasing managerial prerogative and control. Managerial decisions to implement SIAs were not taken in isolation but as part of a multiplicity of different long and short-term business decisions to change the daily management of operations, the day-to-day workplace practices in the operations themselves, and/or organisational cultures, i.e. SIAs were a means to an end.

The rationales that managers of WA mining organisations stated reflected the multifaceted considerations that were made when SIAs were introduced by their organisations. SIAs were regarded as an important tool for the implementation of workplace reforms and the establishment of the industries’ preferred workplace relations – reflected by direct employer-employee relations, substantial levels of
managerial prerogative and control, organisational flexibilities, and reliance on internal rather than external forms of regulation.

The stated rationales were largely in line with the existing literature, but revealed some further insights. The importance of SIAs as instruments to provide organisations with increased industrial certainty emerged as a key motivation for organisations. Another core motivation underlying the implementation of SIAs was to establish new workplace relations based on direct employer-employee relations, thus altering the labour-management social contract.

The labour-management relationship was shifted from the collective to the individual level. Interviewees recognised that this commonly involved the exclusion of unions from their organisations, but managers argued that business reasons rather than ‘de-unionisation’ were the primary driver for the agreements, although union interviewees saw this differently. Irrespective of the perspective, what eventuated was that management were able to ‘escape’ union relationships in relation to industrial agreement making. One of the dominant business reasons included the speed and the process of being able to introduce organisational change, which was regarded much more favourable under SIAs than collective bargaining.

The findings also revealed the importance of the client-contractor relationship in explaining the rationale for the SIAs. Since the agreements reduced exposure to protected industrial action they improved a contractor’s risk profile, whilst it was also apparent that client preferences for the SIAs drove the uptake of the agreements. The analysis revealed a dependency relationship between some of the resources contractors and their clients in terms of their industrial relations management. Thus client preferences rather than organisational strategy or requirements were the driving force for a number of the contractors.

Organisations constructed the SIAs to give management maximum flexibility and then offered them to employees on take-it-or-leave-it basis. Only limited individualization of the content of the SIAs took place, which further suggests that SIAs were, in some respects, a form of collective rather than individual agreement making, however without a bargaining component. Any individualisation that did take place was, according to interviewees, not reflected in the SIAs but rather in the employees’
common law contracts. The content of the SIAs further revealed the ways in which managerial prerogative and control were strengthened. The agreements provided management with capacity to unilaterally make changes in relation to various organisational flexibilities.

The agreements were thus partly imposed upon employees, which is reflective of employer negotiation strategies based on ‘forcing’. At the same time, since the SIAs were also frequently incentivized – with the purpose of establishing new direct relations between management and employees – this on the other hand could be characterized as ‘fostering’. Employers thus used a combination of ‘forcing’, ‘fostering’ and ‘escape’ negotiation strategies to individualise the industrial agreement making, which enabled them to establish their preferred workplace relations.
Chapter 6 – The Transitional Period: Preserving the Preferred ER/HR Arrangements

Introduction
When the Rudd Labor government was elected in 2007 it sought to expand collective bargaining and remove individual bargaining in the form of SIAs, since Labor perceived the SIAs to produce unfairness labour market outcomes. Rather than abolishing SIAs overnight the government opted for a transitional period in which the SIAs were still available but were slowly phased out instead (Sutherland 2009). The transitional period (the middle of Figure 6.1) was marked by the *The Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 (Cth) (transitional legislation)* which became operational in March 2008 and was replaced by the *Fair Work Act 2009*.  

**Figure 6.1 Overview of successive federal ER regulatory regimes in relation to SIAs**

This chapter demonstrates that management of organisations in the WA mining industry deemed the prospect of the *FW Act* as unfavourable to their operations and considered the Act a threat to their preferred ER/HR arrangements. Managements’ strategic choices in this transitional period were therefore largely shaped by a desire to retain the status quo. Management used the transitional period preserve their preferred workplace relations and were also able to mitigate the impact of the *FW Act* for a period of up to five years. Interestingly, whilst for some it was through continued use of individual agreements, the vast majority relied on collective agreements to achieve this.
This chapter explores several aspects in relation to the transitional period. Organisations made use of different industrial instruments in the immediate lead up to, and during, the transitional period which enabled them to retain what they had. These are described, as are the reasons why the organisations went down their chosen paths. The most prevalent strategy in the WA mining industry was the extensive use of non-union employee collective agreements (ECAs).

6.1 Managements’ Strategic Choices in the Transitional Period

“There was significant concern out there, and there still is, about the collective or the enterprise agreement bargaining process under the Fair Work Act and the implications for employers.” (External Advisor EX07)

Organisations in the WA mining industry used the transitional period to preserve their existing ER/HR arrangements. One of the external advisors (EX07) stated that it was often a combination of both wanting to avoid unfavourable provisions under the proposed FW regime as well as the determination to preserve their existing workplace practices that shaped the employers’ strategies. Management took a number of different strategic choices to preserve their existing arrangements, including the renewal of Australian Workplace Agreements (AWAs), the use of the temporal Individual Transitional Employee Agreements (ITEAs), and the implementation of non-union Employee Collective Agreements (ECAs).

“And a lot of those people, a lot of those were renewed prior to the AWAs stopping. So that meant that they had five year AWAs” (EX08)

Employers bought themselves extra time by renewing their AWAs before the March 2008 deadline, which meant that these AWAs wouldn’t expire for another five years, that is March 2013. This gave organisations the time to put in place other measures to preserve their preferred arrangements. Only a limited number of the interviewees (MN05, MN13, EX08) discussed the deliberate last minute renewal of their AWAs. Other sources revealed, however, that there was a surge of AWAs in the mining industry in the months before they became unavailable (Fair Work Act Review 2012; Skulley & Scott 2007).
When the AWAs became unavailable the ITEAs – transitional SIAs – then became a popular stopgap measure, 13 of the organisations indicated that they used them (MC2, MC3, MC7, MC12, RC1, RC2, RC4, RC6, RC7, RC9, RC10, RC11, RC13). The ITEAs were used for new employees, as well as for those employees whose AWAs expired. Interviewees argued that these ITEAs were seen by most organisations only as a short term, and unsustainable, solution due to their short expiry dates because ITEAs could not have a nominal expiry date later than 31 December 2009 (MN03, MN04).

“They used a few ITEAs but of course they have a very limited life” (MN34)

What the ITEAs did permit was the opportunity for employers to put in place more lasting mechanisms to retain their preferred ER/HR arrangements.

One of these more permanent measures was the use of ECAs throughout the WA mining industry. The strategy to use ECAs in one form or another was a particularly popular choice that was adopted by 21 of the 24 SIA-using organisations that were researched. These non-union collective agreements could be implemented in the transitional period with relative ease and minimal union involvement. A number of the interviewees (MN04, MN09, MN20, EAR08, EX07) indicated that the implementation of the ECAs was a deliberate attempt by the organisations to (temporarily) evade some of the provisions under the FW legislation that management regarded as unfavourable to their operations. These agreements also provided the organisations with industrial certainty leading up to and into the FW regime (MN02, MN09, MN11, MN18). The move to ECAs also revealed that it was not so much the individualised nature of SIAs that mattered to management but rather the outcomes that were achieved through their use.

The majority of organisations from the WA mining industry that were investigated in this research implemented ECAs (MC1, MC2, MC3, MC5, MC7, MC9, MC10, MC11, MC12, RC1, RC2, RC3, RC4, RC5, RC6, RC7, RC8, RC9, RC11, RC12, RC13). The interviews with the industry experts revealed that all of the employer associations’ representatives (EAR02, EAR03, EAR06, EAR08) as well as the external advisors who were active in the WA mining industry (EX02, EX03, EX04, EX07, EX08) were heavily involved with the implementation of ECAs in the months leading up to 1 July 2009, when the Fair Work regime would become operational. The union officials also
confirmed the surge of ECAs in relation to the SIAs in the transitional period (TU02, TU03, TU05, TU08, TU09).

An employer representative (EAR02) explained that the ECAs continued to provide the same cultural benefits as the SIAs, particularly in relation to the production process, the workforce culture, and the exclusion of unwanted third parties. One of the industry experts argued that the implications of an ECA strategy had minimal impact on employees that were previously covered by SIAs:

“But I think during that non-union collective window, what a lot of them did, [they] just rolled over AWAs into a collective. Employees voted it up because there is no damn difference” (EX03)

In contrast to the majority, it was also found that one mining organisations (MC8) already shifted away entirely from the SIAs before the transitional period. MC8 decided in the early 2000s that it would opt for a common law contract regime only, underpinned by the award, and so stopped using SIAs. Its management (MN26) indicated that it was a riskier strategy, especially in relation to the threat of protected industrial action. Nonetheless the organisation hadn’t experienced any issues operating in this way, nor was operating in this way perceived as restrictive by the organisation.

In summary, 21 of the 24 SIA-using companies that were researched indicated that they implemented ECAs in the transitional period to deal with the phasing out of SIAs. Thirteen of the 24 companies indicated that they used ITEAs as a temporary measure. Moreover one company moved away from SIAs before the transitional period to an individual common law contracts regime. Lastly two companies only renewed their SIAs before the FW regime came into place.

6.2 Managements’ Concerns with the Fair Work Act

“This is a collective agreement, ok. But they were... the language that was used at the time, it was called a non-union collective agreement because you basically did them with a group of employees. And some employers did them with very small group of employees and others did them with large
numbers. But they were just a... it was really just a way of ensuring they kept in place the system." (MN05)

It was evident from the interviews that managers in the WA mining industry in the transitional period were primarily concerned with retaining their existing arrangements (MN05, MN08, MN11, MN12, MN13, MN16, MN25, EX07, EX08, EAR08). Interviewees indicated three main areas of concern that they had with respect to the FW regime which drove them towards the implementation of the ECAs: concerns with the industrial agreement making process under the new legislation, concerns over the likelihood of increased union involvement, and concerns that the broader scope for agreements under the incoming FW regime would impact on managerial prerogative and control.

The agreement making process for concluding the ECAs was more akin to unilateral managerial agreement making – like the SIAs – rather than collective bargaining. The prospect of having to engage in collective bargaining for new agreements under the FW regime was a factor that pushed organisations towards the implementation of the ECAs. The transitional regime didn’t require the organisations to adhere to good faith bargaining principles or to provide employees with the notice of employee representational rights, both of which would affect the bargaining process. As one of the managers from a contractor explained:

"So they put in place, as there was that window to put in place a five year agreement, to do an employee collective without having to distribute the notice of intention to bargain or things like that, the notice of representational rights.” (MN09)

Changes to the social contract, and in particular in relation to the potential involvement of unions, was a key reason which drove organisations towards the uptake of ECAs. The prospect of having to sit down and negotiate with unions was considered more time consuming than having SIAs or ECAs, while union negotiations also threatened managements’ prerogative. Under the incoming FW Act there was the likelihood that they would experience greater union involvement in the agreement making process (MN4, MN8, MN13, MN16, MN17, MN18, MN25).
“Yeah there is [sic] a few different things that people have tried to do in terms to circumvent the Fair Work Act and in particular the introduction of unions.” (MN20)

“We changed to Employee Collective Agreements under the Workplace Relations Act towards the end of financial year 2009, I think. And I think you find that a lot of companies did the same. And the reason for that is the new agreements under the Fair Work Act required us to go into bargaining with the likes of the unions whether you liked it or not, whereas the ECAs could be negotiated with the employees without that involvement. Under the Fair Work Act now the Enterprise Agreements can still be negotiated with the employees but there is a default bargaining agent if there is a member of one of the unions... [if] one of the employees is a member of a union that union has the right to become a default bargaining agent.” (MN24)

“They were non-union agreements. So because at that stage you could still do, and in fact you were incentivized to get in front of your workforce and put a collective agreement on the ground that they could work from and keep the unions at a distance.” (MN16)

The above responses from the ER/HR managers illustrate that the greater potential role for unions under the FW legislation was a key motivation for these organisations to implement the ECAs under the former legislation.

Another employer consideration for the ECAs was their concern about the broadened scope of industrial agreements under the FW Act when compared to the restricted content of the instruments under the WRA 1996 including Work Choices Amendments. The incoming legislation was thus seen as a direct threat to managerial prerogative. Under the FW Act this would change the scope of matters under negotiation:

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19 The capacity of unionists to act as employee representatives is still restricted somewhat by traditional demarcations as highlighted in Technip Oceania Pty Ltd vs W. Tracey (C2011/4957) in which the Full Bench pointed out that s176(3) “Despite subsections (1) and (2), an employee organisation cannot be a bargaining representative of an employee unless the organisation is entitled to represent the industrial interests of the employee in relation to work that will be performed under the agreement.”
“I think what most people are concerned about is that the way the Fair Work Act is structured, particularly with the types of issues that can be negotiated, right. So very broad terms, you know you could negotiate on anything.” (MN05)

6.3 How ECAs preserved the industry’s preferred ER/HR arrangements

There were differences in the way in which the mining companies and the contractors used the ECAs to preserve their preferred industrial arrangements. These differences can be viewed from the different positions of these organisations in the supply chain, which affect managements’ attitudes towards, and ability to manage, industrial risk, i.e. the threat of protected industrial action.

The introduction of ECAs did not necessarily spell the end for the SIAs as companies opted for a dual system of SIAs and ECAs. Six miners and two contractors implemented ECAs to cover new employees and retained SIAs for their existing workforces (MC1, MC3, MC7, MC10, MC11, MC12, RC1, RC4). They ensured that their ECAs applied to people who weren’t covered by SIAs. In some instances this meant that agreements applied from a certain date to cover all new employees that were hired from that date, a practice that was deemed invalid by the Full Court for Rio Tinto Iron Ore (Ellem 2014, p. 195), as discussed in Chapter 3. This judgement put at risk some of the ECAs by other companies in the WA mining industry. Due to the early replacement of the ECAs for strategic reasons, however, the possibility of legal challenges to other ECAs were not found to be a major concern for managers in this research – as will be discussed in detail in the next chapter.

On the other hand eight of the contractors and two of the mining companies (MC2, MC9, RC2, RC3, RC5, RC6, RC7, RC9, RC12, RC13) indicated that they opted to completely replace their SIAs by ECAs. These organisations put in place one or more ECAs to which they transferred their existing employees. This approach was more common amongst the contracting companies because of the greater risk of industrial action. The clients’ emphasis on the need to avoid industrial action meant contractors felt that they could not operate without the protections afforded by the legislation to industrial instruments that hadn’t reached their nominal expiry dates, i.e. in-term
agreements—employees cannot undertake protected industrial action if there is an in-term agreement.

Contractors frequently use their industrial agreements on a project to project basis, having designated project agreements for particular work. This affects the lifespan of their industrial instruments as agreements come to an end when the contractors’ involvement in projects ceases. In contrast to the mining companies, therefore the lifespan of the industrial agreements for some of the contractors tends to be substantially shorter than the maximum nominal expiry date that agreements can have under the Act. Moreover, when employees were moved from one project to another, new industrial instruments were required. Thus contractors more frequently had to shift their workforces from one industrial instrument to another.

That in-term industrial instruments were regarded as essential in order to win work was highlighted by the responses from a number of contractor interviewees (MN02, MN08, MN09, MN11, MN14, MN30). The example below further reveals how much the ECA roll-out was a management driven process:

“Well you know being a contracting company our clients don’t want any industrial action or anything like that. So it was a risk to us not having a collective agreement in place, you know, post 2009. Your clients don’t want to give you work unless you have any industrial instruments covering your employees. That was why we voted so many [ECAs] up before the new legislation came in.” (MN02)

The content of the ECAs was highly similar to that of the SIAs, according to managers (MN03, MN04, MN08, MN11, MN14, MN23, MN24, MN25, MN32). Thus ECAs effectively locked in the existing SIA terms and conditions for another five years, thereby preserving managements’ preferred workplace relations.

“So some of the agreements when they did get rationalized into a collective agreement the terms and conditions in those agreements, to maintain the employees’ good faith when transitioning into them, really looked like a sort of cut and paste of the individual workplace agreement.” (MN14)

“Effectively identical to what the AWAs were.” (MN32)
The employer association representatives and external advisers also explained that there was a high degree of similarity between SIAs and ECAs (EAR02, EAR03, EAR06, EX03, EX04, EX07, EX08), validating managements' assertions about the alikeness of the content of these industrial instruments, and thus the conclusion that a preservation of the existing regimes was taking place in this period:

“They rolled the AWAs into a collective as you could still do that. And they are still in term, and they are also of interest because they would have been, and I know for a fact because there were two or three cases where they were word perfect. They were not different at all apart from the statutory, the technical stuff. Otherwise the terms and conditions, mirror image, just like [the colleague] described. Mirror image and they are in term right now, except for one or two that thought... their scopes were a little wider than they actually were [referring to RTIO’s invalidated ECA.]” (EX04)

Since a large number of the employment benefits were being provided on top of both the ECAs and SIAs, through common law contracts and company policies and procedures, it therefore made little difference for employees whether they were covered by the SIAs or ECAs (MN03, MN05, MN12, MN25, MN31, MN33). These mechanisms also enabled organisations to flow on more generous terms – where these were included in new agreements – to those people remaining on the old instruments (MN12, MN29, MN34), thereby ensuring consistency throughout organisations.

“But the crux of it is that the benefits or the goodies still sit in the common law contract to some extent” (MN31)

“...new conditions that were offered to employees on the enterprise agreements were flowed on to AWA employees anyway.” (MN12)

The ECAs functioned largely as safety net / base-line agreements (MN04, MN08, MN11, MN31, MN33), which was similar to the bare-bone SIAs. The agreements continued to provide for substantial flexibility, managerial prerogative and control, and
favoured internal over external regulation. One of the managers explained how a safety net ECA worked in their organisation:

“By introducing the non-union collective agreement we were essentially saying well if that’s the award we’ll put in an agreement just slightly above that, but on site-by-site basis we’ll continue to pay people at a higher level just using common law contracts of employment, which gave employees those additional benefits.” (MN11)

Organisations were able to preserve their unilateral decision making capabilities, as they had been able to do when employing people on SIAs and thereby kept the system of substantial management flexibilities in place. At the same time, the ECAs provided management with the industrial certainty that they required to be sure that their operations, or their clients’, weren’t exposed to the threat of protected industrial action.

**Conclusion**

The findings in this chapter reveal that the concept of a lengthy transition period needs to be considered carefully by policy makers and actors. The Labor government’s decision to grant a lengthy transition period – perhaps a compromise aiming to soften employer opposition to the FW Act – was critical in enabling management in the WA mining industry to entrench their preferred style of workplace relations. Management had successfully been able to implement their preferred workplace relations regimes using SIAs, and subsequent decisions just before and in the transitional period were geared to preserve the status quo. This was reflected in the substantial renewal of AWAs just before their cut-off date in the mining industry, as well as the heavy use of ITEAs and ECAs in the transitional period.

The interview responses revealed that the strategic choice that was commonly made throughout the industry was to utilise non-union collective industrial instruments, ECAs, whereby the objective of the ECAs was to retain what was already realised. The ECAs achieved a number of important employer objectives. They enabled the organisations to maintain the existing employment conditions; they afforded them continued protection from industrial action; and maintained managements’ control of the workplace. That the content of the ECAs and SIAs was broadly similar further
illustrates that ECAs were a mechanism to retain the existing arrangements, while it also reveals that it wasn’t necessarily the ‘individual’ nature of SIAs that mattered to management.

Although ECAs shifted the social contract from the individual to the collective level, management was able to implement the agreements with relative ease as the process of concluding the ECAs was still more akin to unilateral managerial agreement making than collective bargaining. The alternative of union collective agreements would, in the employers’ view, have led to less favourable employment terms, increased the vulnerability to threat of protected industrial action during the negotiation process, and it was perceived that unions would challenge management control over operational matters. While the implementation of the ECAs was a management driven process, management’s capacity to ‘force’ the ECAs upon the employees was more limited than with the SIAs due to the differences between individual and collective agreements. This also included the employees’ ability to collectively vote on the ECAs. It was thus a combination of ‘fostering’ negotiation strategies in relation the employees and the continued ‘escape’ of the unions in relation to industrial agreement making that resulted in the implementation of the ECAs that mirrored SIAs.

The ECAs were used in different ways to achieve similar outcomes – the preservation of which was realised with the SIAs. On the one hand the ECAs were used to replace SIAs, whereas on the other they were used alongside the individual agreements in the WA mining industry. Mining companies predominantly went for an approach of maintaining their SIAs for as long as they could and to utilise the ECAs as a complementary mechanism to provide additional protection and cover any new employees, whilst contractors tended to entirely replace their SIAs by the ECAs as they could not risk having employees on expired agreements as this posed a risk in relation to industrial action occurring on projects. These differences arose thus because of operational differences of the organisations, as well as the ways in which they could manage ‘industrial risk’.
Chapter 7 – The Fair Work Act: Life without SIAs

Introduction

In this third results chapter the experiences of the researched organisations under the *Fair Work (FW) Act 2009* (right hand side Figure 7.1) are explored. The Act formed the basis for an ER regulatory system that promotes collectivism, whilst at the same time removed the statutory individual bargaining stream.

First this chapter outlines what happened to those SIAs that were retained in the transitional period. As will be shown a number of organisations continued to have an organisational preference for maintaining their SIAs under the *FW* regulatory regime, this despite their expiry.

Secondly, the experiences of the mining companies and contracting organisations with respect to the agreement making provisions under the new legislation are examined and contrasted. The analysis of the interviewees’ responses highlights that there are shared views across the previously SIA-using sections of the WA mining industry in relation to the issues encountered with agreement making processes and the provisions of the *FW* regime. The findings illustrate that under this regime a shift from unilateral managerial agreement making to collective agreement making took place in the mining industry.

Thirdly, the agreements that the organisations have concluded thus far under the *FW* regime were examined and compared where feasible. Content analyses of the enterprise agreements (EAs) demonstrate that several changes can be observed in both the substantive and the procedural outcomes. At the same time it was found that
organisations, especially the mining companies, were able to largely retain their preferred ER/HR arrangements.

Fourthly, the impact of the new regulatory regime on the labour-management social contract is discussed. The findings in particular reveal that in contrast to the SIA regimes the unions became more involved in the agreement making process.

Fifthly, the implications for day-to-day workplace practices of the organisations and their daily management were assessed. The findings indicate that the new regulatory regime only had a limited impact on the organisations’ operations. There were no fundamental changes in the organisations’ workplace relations, operational practices, or their organisational cultures.

Sixthly, the differences in the experiences under the FW regime between the mining companies and the contractors are highlighted. Lastly, the management strategic choices that were made under the new regime to ensure that the organisations achieved and/or retained their preferred ER/HR arrangements, which are discussed throughout the various sections in this chapter, are re-emphasized.

7.1 What happened to SIAs under the FW regime?

It was the legislator’s intent that there shouldn’t any longer be any SIAs under the FW regime, and hence the ability to conclude new ones wasn’t available. Those SIAs that were still in place when the regulatory regime came into operation were, however, allowed to continue to operate until they were terminated.

When the data for the research was collected, SIAs remained in place at eight of the 24 researched organisations that used to rely on them. As explained in the previous chapter, 12 of the 24 SIA-using organisations went through the process of replacing their SIAs with other instruments before and in the transitional period, whilst another four organisations phased out SIAs in their organisations through the process of implementing their enterprise agreements (EAs) under the FW regime.

SIAs thus continued to be an integral part of the ER/HR arrangements and strategies for one third of the organisations in the WA mining industry under the FW regime. This despite the fact that it had been more than three years after the option to conclude new SIAs was removed from the ER regulatory regime. A number of these
organisations (MC1, MC3, MC12, RC4, RC11) had a deliberate policy of retaining their SIAs, even though the agreements had by that stage reached their nominal expiry date – which meant that employees could possibly participate in forms of protected industrial action.

Other organisations (MC10, MC11, RC1) also continued to have employees on SIAs. Here, however, rather than being a deliberate management strategy, it was explained by managers in two of those instances that this was the preference of the employees (MC11, RC1). Employees were reluctant to move away from their individual agreements and the companies were happy to leave these in place as the majority of employees were covered by other in-term instruments. The FW legislation thus far has not resulted in there being ‘no SIAs in Australian workplaces’.

Even though these organisations still had (expired) SIAs at the time of the interviews, as interviewees explained (MN02, MN25, MN31, EX08) because of the transitional provisions\(^\text{20}\) – the Fair Work (Transitional Provision and Consequential Amendments) Act 2009 – those SIAs were affected by the option of conditional termination (Sch 3 item 18(1)) when new EAs were concluded. This provision provided a further mechanism – in addition to the capacity of either party to terminate the agreement after reaching its nominal expiry date – for the replacement of SIAs when EAs were concluded under the new regime – thus encouraging parties to replace SIAs. The legislator’s objective with this particular provision was to reduce the number of SIAs that would remain in place after EAs had been concluded, which was in line with the legislator’s position that there was no place for these agreements. Two managers explained (MN02, MN31) that in their organisations they left it up to employees to decide whether or not to move onto the EA and terminate their SIA, as those companies that continued to have SIAs in place had no strict objection to having some employees on expired agreements:

“We left them alone. We have had no issues with people who remain on the AWAs or ITEAs. So we left them.” (MN02)

In one instance (MC11), for example, it was explained that a small number of employees who initially wanted to remain on their SIAs later on decided to be

\(^{20}\) These were enacted at the same time as the FW Act
transferred to the EA as there was little benefit for them remaining on the expired SIAs. Others, however, remained covered by their SIAs, which will remain in place until terminated by either employee or company.

7.2 Agreement Making under the FW regime

Table 7.1 provides an overview of the status of the various industrial instruments that the organisations had in place at the time of the interviews. It reveals that despite their concerns, 21 of 24 SIA-using organisations had concluded new enterprise agreements (EAs) under the FW regime, whereby 18 of these 21 of the organisations found themselves at the bargaining table with unions. Three hadn’t concluded EAs thus far. Despite managements’ concerns about the agreement making provisions of the FW regime – further discussed below – organisations in the WA mining industry did conclude new industrial instruments under this ER regulatory system.

Table 7.1 Overview status industrial instruments of organisations under FW Act at time of interviews (May 2012 – August 2013)

<table>
<thead>
<tr>
<th></th>
<th>SIAs remaining?</th>
<th>EAs concluded under FW for SIA covered workforce?</th>
<th>EAs concluded under FW?</th>
<th>Union(s) involved in EA negotiations?</th>
<th>ECAs concluded in the transitional period?</th>
<th>ECAs replaced under the FW?</th>
<th>Comments</th>
</tr>
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<td>MC1</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>EAs covered non-ECA section, SIAs preserved</td>
</tr>
<tr>
<td>MC2</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>EAs covered non-ECA section, SIAs preserved</td>
</tr>
<tr>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Never had SIAs</td>
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<td>MC4</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Moved SIA covered staff to common law contracts</td>
</tr>
<tr>
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<td>Yes</td>
<td>Yes</td>
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<td>Yes</td>
<td>No</td>
<td>No</td>
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<tr>
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<td>Yes</td>
<td>Yes</td>
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<td>No</td>
<td>ECA still in place</td>
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<td>MC10</td>
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<td>No</td>
<td>Yes</td>
<td>No</td>
<td>ECA still in place</td>
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<td>MC11</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>ECA was not related to SIA preservation</td>
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<tr>
<td>MC12</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>SIA only replaced by EA in one operational area organisations,</td>
</tr>
<tr>
<td>RC1</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Partly</td>
<td># employees preferred to remain on SIAs</td>
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<tr>
<td>RC2</td>
<td>No</td>
<td>Yes(^1)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Interviewee left organisation before replacement ECAs</td>
</tr>
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</table>

\(^1\) Even though the interviewee had left organisation it could be established through FWC database http://fwc.gov.au/index.cfm?pagename=agreementsfind that the ECAs that interviewee had mentioned were replaced by FW EAs
<table>
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<tr>
<th></th>
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<th>RC5</th>
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<th>RC11</th>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Partly</td>
<td>No</td>
<td>Yes</td>
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<tr>
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<td>Yes</td>
<td>Partly</td>
<td></td>
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</table>

In relation to their previous SIA workforces it was found that six of the 24 researched organisations (MC6, MC8, MC9, MC10, RC9, RC11) hadn’t concluded EAs for those employees previously covered by the SIAs. On the other hand 17 of the 24 organisations implemented at least one EA for their previous SIA employees. Due to management’s responses it could not be established for one of the contracting organisations (RC7) whether their EA was in relation to their SIA employees. What is of further interest is that the in the case of 16 of the 17 organisation that put in place EAs for the previous SIA covered employees that these EAs had at least one union signatory to the agreements. This was a substantial change compared to the union exclusion that was taking place under SIAs, at the same time – as will be evident from the discussions below – the fact that unions were signatories didn’t entail that they were union dominated negotiations.

### 7.2.1 Rationale for the use of Enterprise Agreements under the Fair Work Regime

The reason as to why so many of the mining organisations concluded EAs under the *FW* Act was particularly related to ensuring that they weren’t exposed to protected

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22 See footnote 21

23 The interviewees responses leave doubt as to whether those section of the workforce on SIAs have now been covered by EAs or that they remain covered by SIAs according to organisations responses “We haven’t negotiated many FW Act EA’s” (MN18)

24 At the time of the interview the EA proposal had been voted down by the workforce, however later in 2013 the agreement was approved, this is the only additional agreement that was included in the analysis

25 ECA had coverage over different subsidiaries of the organisations and hadn’t been replaced.

26 The organisation only had one ECA that was related SIA regime. Purpose, however, wasn’t the preservation of existing arrangements. Where no ECA was available employees were moved to common law contracts
industrial action (MN02, MN05, MN08, MN09, MN14, MN28, MN30, MN34, EX07, EX08). Eleven managers (MN03, MN08, MN09, MN16, MN25, MN27, MN28, MN29, MN30, MN32, MN34) indicated that the difference between the award rates and paid rates provides enough room to manoeuvre to gain desired flexibilities. The modern mining award was not regarded as restrictive on organisations’ required workplace practices (MN05, MN12, MN24, MN28, MN29). Thus the necessity for new agreements in the industry was predominantly motivated by the need to minimise the threat of protected industrial action. Also the trade union interviewees (TU02, TU03, TU08, TU09) recognised that there continues to be a mantra in the industry of trying to minimise this threat, which led to managements’ desire for in-term industrial instruments.

It was evident from the interviews that the organisations were able to implement their desired workplace practices and ER/HR arrangements through the use of SIAs and preserved these with the ECAs. Therefore the issue for management was how they could retain what they had achieved previously.

“Well why do they need an agreement? The only value they get, because their own employment systems are their meeting mark, their policies are dealing with issues, they got their own internal fair treatment systems or grievance resolution systems, what do they need an agreement for? And the answer comes back to they’re concerned that there not being industrial action.” (EX08)

Managements’ angst towards protected industrial action can be related back to the costs that industrial action can inflict on organisations, including lost revenue, exposure to liquidated damages, and being perceived as an unreliable supplier/contractor. Mining companies stressed the need for continuity of supply to their overseas clients (MN05, MN07, MN09, MN3, MN33, EX08). Contractors claimed that for them it had become even more critical under the FW regime to ensure that their operations weren’t exposed to industrial action. This need to ensure there wasn’t any exposure was largely attributed to demands from clients – including the mining companies.
“We’ve got an agreement in place that becomes a baseline, it gives us the certainty that employees can’t take industrial action, can’t take protected industrial action for the next four years, which of course from our clients’ perspective is what they expect us to be able to hand on heart promise to be able to deliver.” (MN11)

“A contractor coming in needs to have some type of regulation in place which prevents protected industrial action” (EX04)

7.2.2 Agreement making under the FW regime

To understand how the FW regime impacted on the organisations in the WA mining industry, it is worthwhile comparing the experiences of the managers in industrial agreement making under the FW regime with their SIA and ECA experiences. The FW Act marked a shift in industrial agreement making, reversing the privileging of individual over collective agreements. The managers (MN05, MN12, MN08, MN09, MN27, MN33, MN34) perceived that the agreement making mechanisms under the FW Act had a number of potentially adverse consequences for their organisations. These included an increased industrial risk, a slower speed at which agreements could be concluded and implemented, and delays for contractors in relation to when work can be commenced. All these they argued had detrimental commercial implications for their organisations. Aspects of the new regime and particular provisions of the FW Act that affected the organisations in relation to the removal of SIAs are discussed below.27

One of the concerns of management was the fact that under the FW regime they had to engage in collective bargaining rather than being able to unilaterally impose individual agreements:

“So the biggest issue now is just the fact that you have got to have this... at various points you are now going to be exposed to this collective bargaining which means your whole operation is exposed. Previously under AWAs

27 Although there were also other provisions that have been of influence on the bargaining process, such as the protected action ballot provisions – for example, the JJ Richards decisions (Catanzariti & Kane 2012, pp. 315-316) – the emphasis here is placed on those provisions that emerged as influential from analysing the interview transcripts.
Managers viewed the FW regime as restrictive in relation to the sort of industrial instruments that are available. A number of managers referred to it as a ‘monopoly system’ (MN05, MN13, MN16, MN31, MN34) because the new regime only offers one type of collective industrial instrument. Besides removing SIAs, the FW regime also ended the differentiation between union and non-union collective agreements. Thus the ease with which the unions could be involved in negotiations was something of a concern to management. Nonetheless management strongly preferred to have some sort of industrial agreement in place for those employees that were previously covered by the SIAs and ECAs:

“As I said we did have a collective [agreement] and we have gone through to get an EA because there are no other agreements available and you would appreciate that with a blue collar workforce you want an agreement in place.” (MN31)

“As a matter of principle we liked to have in place for our blue collar employees an in-term industrial agreement of some kind, and of course now it is very very limited.” (MN34)

What follows is a thematic exploration of the various matters that management brought up in relation to agreement making and bargaining under the new regime.

7.2.2.1 The employee representational rights
Managers were of the view that the employee representational rights granted under the FW Act substantially changed the dynamic of agreement making (MN05, MN08, MN09, MN14, MN16, MN17, MN25, MN33, MN34). At the beginning of the bargaining process employers are now required to issue the notice of employee representational rights (FWA s173), which allows employees to appoint their own bargaining representatives for the conclusion of the EAs (FWA s176). A number of interviewees (MN05, MN08, MN09, MN14, MN16, MN17, MN25, MN33, MN34) commented on the impact that FWA section 176 (1)(B) has on the process, since it provides unions with
greater capacity to represent their members and be a ‘de-facto’ bargaining representative. Despite being well covered in the media and industry publications still surprised certain managers in the actual negotiations:

“What got a bit up our nose was that unions were the default bargaining representatives at the bargaining table” (MN25)

In some instances management perceived the representational rights as quite a negative factor in the agreement making process, claiming it created increased uncertainty.

“So the notice of representational rights for instance, which is a requirement under the Act. So that went out and sort of created a lot of confusion and a lot of mistrust right from the get go. Whilst it is intended to educate and inform the employees that they have opportunities to seek... to represent themselves or have unions or others represent them. It was a little bit odd. In that... look they were... in some cases they wanted union representation and we embraced that. We half expected it. I mean we had lawyers supporting us through it and they said ‘you are going to get unions knocking on the door and all that sort of stuff’. What we actually found was that the unions had very little interest in our mine sites.” (MN16)

Managers perceived that unions gained a more prominent role in the agreement making process under the FW regime. This was confirmed in reality by the fact that out of the 17 organisations in the industry that negotiated under the new framework for their previous SIA employees 16 of those had at least one signatory to their EAs. As will be discussed below, the extent of union involvement in these EA negotiations differed, whereby at times unions played an active role and in others merely decided to become a signatory to the agreement at the end of the process.

The employee representational rights provision also enables the direct involvement of employees as representatives in the negotiation process. Employees can either represent themselves (self-representation) or their colleagues under the FW regime. A number of the organisations experienced varying degrees of employee representation
(MN2, MN14, MN16, MN17, MN25, MN31, MN32) and self-representation (MN14, MN31, MN33).

“There was [sic] 16 individually elected employee representatives from the eight different operational areas of that [type of] business. So the unions were a minority sitting at that table. [The union] had been elected by 10 out of 90 employees that are covered under that agreement.” (MN14)

A number of the managers (MN02, MN14, MN32) suggested that their organisation to some extent attempted to influence the representational rights process. They indicated that they attempted to avoid ending up with too many employees opting for self-representation.28

“So the way we approach this is we send out the notice of representational rights. Obviously that defaults to a union automatically unless they nominate someone themselves. So we tell the guys they need to nominate two reps, two to three reps that will represent all of them, and then we just get them to all sign a form. We give them the notice and tell them what they can do, but we very clearly steer them in the direction of ‘ok you need to nominate two or three of you’. ‘Write the three guys’ names on the top of the form and then everyone just signs below nominating those three people as the reps for everyone.’ And that’s how we get around it.” (MN32)

What arose with the new representational rights were situations where employers found themselves at the bargaining table with a large number of representatives, one of the organisations experienced the following:

“...we went through the enterprise bargaining process where we were bargaining with 4 unions and 79 bargaining reps, and that was a lot of give and take about trying to retain flexibility.” (MN31)

28 Although the verdict in Peabody Moorvale Pty Ltd v Construction, Forestry, Mining and Energy Union (CFMEU) [2014] FWCFB 2042 (2 April 2014) was handed down after the interviews were conducted, it highlights some of the legal issues surrounding management’s capacity to influence the representational rights process. On the basis of the information provided by the interviewees nothing should be said about the legality of their practices as it could not be observed whether their conduct was or wasn’t in accordance with the Act. It is merely observed here that the interviewees indicated that they tried to influence the process.
The above example wasn’t a ‘one-off’ as one of the contractors (RC8) also experienced a negotiation process with four unions and 25 employee bargaining representatives. This high number of representatives, according to the managers, makes the agreement making process quite unwieldy. The representational rights have thus created a ‘hybrid’ bargaining system. Collective bargaining under the FW regime can include union officials and/or (non-union affiliated) employees representatives from the organisations, whereby a combination of these two was frequently found in the agreement making processes in the WA mining industry.

7.2.2.2 Good faith bargaining requirements

One of the other requirements of the FW legislation is that in the process of making new agreements parties are required to adhere to good faith bargaining (GFB) requirements. Interviewees, however, didn’t view these provisions as a major obstacle for their organisations to get agreements in place.

“So the obligations as were under the Fair Work Act to bargain in good faith was something that we would say from this business’ perspective is something that we would do anyway.” (MN11)

Although interviewees were not concerned about the good faith bargaining procedures, there were concerns about the agreement making procedures of the Act more generally (MN16, MN17, MN18, MN27, MN33, EX08).

“Negotiations have become far more process oriented than under [the] former legislative scheme, i.e. it’s no longer simply what you do, but how you do it that matters”. (MN18)

One of the reasons why the interviewees had limited concerns about GFB requirements was that they could make the strategic choice to initiate the bargaining process more than three months before the nominal expiry date. This was a strategy that was actively pursued by a number of organisations. Interviewees explained that for their organisations the major benefits of this strategy was that they (MN03, MN05, MN09, MN14, MN34) ensured that they avoided being subjected to protected industrial action, while at the same time the GFB provision did not apply. Hence no bargaining orders could be sought by employees and their unions.
“The way the Act works is that you are not into good faith bargaining if you are negotiating early enough and you can have a reasonable negotiation process starting to run before people start to point guns at each other, if you know what I mean.” (MN05)

“What they’re looking to do is go early. They’re going, they’re trying to put in place new collective agreements in advance of the expiry. In doing that they avoid... you avoid, under the Fair Work Act, you can only get good faith bargaining orders within three months’ time of the expiry of the agreement and you can only take protected action upon the expiry of the agreement.” (TU03)

The fact that under the FW Act employers can avoid being subjected to bargaining requirements (FWA s228) by moving early has also been pointed out by the Fair Work Act Review (2012, p. 140). This is the case since by moving early employee representatives cannot pursue bargaining order (FWA s229(3)(a)). Managements’ main motivation for this particular strategy appeared to be driven by the goal of minimising industrial risk.

7.2.2.3 The impact of transitional provisions on managements’ choices

Further opportunities to minimise industrial risk in industrial agreement making under the FW regime existed because of the organisations’ heavy reliance on the ECAs. Under the transitional provisions, as also pointed out by Stewart (2011, pp. 152-153), pre-FW Act transitional agreements, such as ECAs, can be replaced at any time when a new EA is negotiated. In that respect there is thus an incentive built into the current legislation for these employers to move early and replace their ECAs by EAs before their nominal expiry dates. As organisations don’t have to go through the process of terminating their ECAs, which haven’t reached their nominal expiry date, they are therefore not exposed to the possibility of industrial action.

You don’t wait until these agreements expire. Right that’s a... that’s a risky thing to do in our view. Ok, and even if we didn’t have the Fair Work Act it’s never good practice to wait for an agreement to expire and then try and renegotiate it. It is always good practice to try and... you know when the
expiry date is going to come up. You should be talking about replacing that agreement a long time before the expiry date comes in.” (MN05)

When organisations were moving early to replace their ECAs by EAs their industrial agreement making processes didn’t necessarily contain a collective bargaining process. One of the mining organisations (MC2), for example, went through a process of individual consultation when they were moving early to replace their ECAs. Rather than engaging with the workforce in a collective manner, supervisors were consulting employees on a one-on-one basis. The supervisors requested input from the employees as to what they valued in the collective agreement. The organisation subsequently took the employees’ wishes into consideration, drafted up an EA, sent it to the unions for feedback, and then put it up for a vote – successfully.

7.2.2.3 The voting process under the FW Act

Another of the agreement making provisions the interviewees highlighted as being influential on their capacity to conclude EAs were the mechanisms related to the voting up of agreements. Although the legislation provides for greater union influence in the negotiations, as a number of interviewees (MN4, MN11, MN12, MN13) explained, it is not necessary to get the union’s approval in order to put an agreement up for a vote to the workforce when they are involved in EA negotiations.

Some of the organisations, including both miners (MC3) and contractors (RC4), in the study put agreements up for a vote to their employees despite the union(s) disagreeing with the content of the proposed agreements.

“...after a number of months of back and forth with the union in what we sort of describe as bargaining, we ultimately said to [union] ‘we hear what you are saying, we don’t agree with it, we intend to go out to our employees and ask them to vote on this agreement, in this form, with these terms and conditions’ and [the union] said ‘no, no, no you shouldn’t do that’ well we said ‘bad luck that is what we are going to do anyway and what we are able to do anyway under the Act.’ So we went through that process which ultimately got approval from our employees.” (MN11)
“In the case of both the [region] and WA the union did not agree to our proposed agreement but it was voted up anyway. We conceded few of the unions’ demands.” (MN12)

These experiences show that the FW Act still permits employers to attempt to unilaterally draft and put forward agreements for a vote, similar to the SIAs and ECAs. Employees under the new regime, however, have a greater capacity to block an agreement by voting it down in comparison to the SIAs.

“So you know, the fact that employees can refuse, and if they get together and organise they can knock over an agreement, means that the employer can’t automatically assume that they will get what they want, whereas under AWAs and ITEAs, ... if you come and someone says ‘here is an ITEA sign it’ they knew most of them are going to sign it. So it has moved the balance of power, it is moved towards employees.” (EX06)

Because employees have the capacity to vote up, or down, a proposed agreement, management can only successfully use the tactic of putting agreements up for a vote despite opposition from the employee representatives when there is a discrepancy between the expectations and aspirations of the employees and their representatives.

7.2.2.4 Management strategies in relation to the coverage of EAs

The organisations in the WA mining industry tended to prefer multiple agreements over a companywide agreement, the exceptions being two of the mining companies (MC9, M11). This was already evident under the ECAs that they had implemented to secure their SIAs regimes, and this was further replicated under the EAs. Mining companies tended to have agreements that were site specific (MC1, MC2, MC3, MC5, MC7, MC10, MC12). Contractors on the other hand had a mixture of client and project specific agreements (RC1, RC3, RC5, RC6, RC7, RC8, RC11, RC12, RC13), agreements that covered specific geographical areas and/or sites (RC1, RC3, RC4, RC6, RC7, RC8, RC9, RC10, RC11, RC12, RC13), as well as agreements for specific operational areas (RC1, RC2, RC6, RC9). At the same time although some of the agreements of the contractors had a broad coverage they nevertheless left scope for project agreements to override these EAs (RC1, RC7).
The use of multiple agreements provided the organisations with increased industrial certainty. It also permitted organisations to tailor the content of agreements to local and/or client specific circumstances and requirements.

“So the strategy we’ve always had has been do a site-by-site enterprise agreement or individual agreements for that site. The reason behind that is that then you are negotiating with 20, 30, 100 people not with 2000 people. It also means that you can negotiate terms and conditions that are very specific to the site, but it also allows a much better outcome from a company perspective and you don’t have the risk of cross-country industrial action occurring.” (MN32)

7.2.2.5 Continued management preference for internal regulation
Managerial choices were further aimed at continuing a model of workplace regulation where the preference is for internal rather than external regulation. This is most visible by the baseline / safety net nature of EAs that a number of organisations managed to conclude (MC1, MC2, MC7, MC11, MC12, RC4). The industrial agreements thus only provide a set of minima whilst the internal company policies and procedures as well as the employees common law contracts reveal the entire terms and condition of employment. Organisations thereby continued to rely extensively on individual common law contracts as well as the companies’ policies and procedures, which provide them with desired flexibilities. It also leaves matters to managerial prerogative – thereby enabling management where necessary to unilaterally make adjustments if required.

“We tend to take an approach of not wanting our industrial agreements too prescriptive. So an example might be hours of work, there is no prescription around what time employees must start work or what time employees must finish work or what breaks they will take, what roster they’ll be on. The prescription around the hours of work is the number of hours an employee is going to work an average week. That enables us to meet our operational needs.” (MN12)
7.2.2.6 Greenfield Agreement under the FW regime

Under the FW regime EAs can also be concluded as greenfield agreements (FWA s172(4)). These agreements can be used to cover employees for new projects, as well as for new business activities and undertakings. Managers argued that FW regime was hindering their capacity to conclude new greenfield agreements. They also argued that greenfield agreements that they had concluded were detrimentally impacting on their organisations (MN08, MN09, MN14, MN16, MN34).

The capacity of the unions to affect the agreement making process through bargaining is most substantial with respect to these greenfield agreements. The FW regime requires management to negotiate with unions who are deemed employee representatives for new greenfield agreements. The previous regime did not necessarily require negotiations with any employee representatives and thus managements’ previous ability to determine agreement unilaterally has been curbed.

Contractor interviewees (MC5, RC1, RC3, RC5, RC6, RC13) indicated that because under the FW regime non-union greenfield agreements and SIAs are no longer available this impacted on their capacity to swiftly conclude agreements for new projects. The speed at which greenfield agreements can be concluded is an issue that was also highlighted in the Fair Work Act Review (2012). Under the current regime management thus have no alternative but to negotiate with the unions for greenfield agreements, whereby contractor interviewees claimed that the unions have the capacity to delay and extract concessions from management before they signed off on agreements. Greenfield agreements give the unions greater bargaining power and the findings indicate that they are willing to use it. The following quotes illustrate these management concerns:

“I think where you lose flexibility is around your ability to ramp up and to ramp down and move to different sites, locations, projects those sorts of things. You know we’ve encountered experiences where it has taken even from a union greensfields’ perspective six months or more to reach an agreement to bargain for a new agreement.” (MN34)

“This [greenfields] is where the unions use that commercial imperative to strongarm those employers, because they hold it up. They threaten to hold
It up which has commercial consequences. They know bloody well, and they do it deliberately. So it is an unfair advantage that they are exercising and it’s got nothing to do with anything industrial, it is pure commercial blackmail. That is what they are doing.” (EX03)

The focus of the research is in relation to those sections of the organisations’ operations and workforces where SIAs were previously used. An issue with managements’ complaints about the greenfield agreements under the FW regime is that it cannot be established that the removal of SIAs in all instances related to their encountered issues in the greenfield sphere. Contractors previously used to rely on different types of agreements, including ECAs and non-union greenfield agreements, hence it was difficult to ascertain to their issues were in direct relation to the removal of SIAs or were more reflective of the broader overhaul of the regulatory system.

### 7.3 Changes in the content of industrial instruments since SIAs

To assess the consequences of the removal of the SIAs the document analysis in this research also included an extensive content analysis of the industrial agreements organisations have concluded. There were however, complications in attempting to undertake the content comparisons. One the one hand there was the lack of access to SIAs which made comparisons against these individual instruments difficult. A number of organisations at the time of the interviews further didn’t have EAs (MC8, MC9, MC10). Although some of the organisations (MC1, MC3, RC9, RC10, RC11) had concluded EAs no previous documents – ECAs or SIAs – were available for comparison. In certain instances, particularly in relation to contractors (RC1, RC3, RC5, RC6, RC12, RC13), it was difficult to ascertain which sections of the workforce were previously covered by SIAs. It could not be established on the basis of the available information which ECAs had been concluded to replace SIAs, since only limited information about this was provided by their managers. Despite these difficulties the document analysis did provide substantial insight. Three sets of documents were analysed. Firstly, ECA-EA comparisons were made where possible, as the ECAs closely resembled the SIAs. Secondly, a flexibility analysis of the EAs covering previous SIA employees was conducted. Thirdly, greenfield agreements for contractors were also assessed.
7.3.1 Analysing the changes from ECAs to EAs

A comparison of successive industrial agreements is one way to ascertain the impact of the regulatory changes, which was possible for six organisations (MC2, MC5, MC7, RC2, RC4, RC8). For these organisations the ECAs, on sites where SIAs were previously used, could be compared against their EAs that were current at the time of the analysis (January 2014).

When conducting direct content comparison between ECAs and EAs it has to be recognised that due to the regulatory requirements their content differed. One the one hand the EAs can contain a broader range of matters than ECAs because the unlawful terms (FWA s194) are less prescriptive than the previously prohibited content (WRA 1996 s356). The Acts also prescribes different mandatory content for the agreements. In the case of the EAs, for example, the two mandatory terms (FWA Division 5) in the form of the individual flexibility agreement (IFAs) (FWA s202) and a consultation term (FWA s205) were not part of the ECA requirements. The different types of agreements were further subject to different safety net requirements.

7.3.1.1 MC2

MC2 had AWAs which were replaced by three ECAs, which in turn were replaced by three EAs. The organisation was quite successful in retaining the preferred ER/HR arrangements under its EAs, partly through its use of an individual consultation strategy. In contrast to the ECAs, in which no unions were involved, all the three EAs had one union as a signatory to the agreement. Nonetheless, according to the interviewee (MN03), the organisation was largely able to conclude EAs which functioned as baseline / safety net agreements. The agreements thus continued to refer a substantial number of matters to company policies and procedures.

In the EAs management still retained the discretion to annually review wages. There was, however, a variation stipulating that reviews could not be used to reduce salaries. Only minor concessions were made in the agreement making process. As the interviewee (MN03) pointed out, one of the differences in the EAs was a broadening of the possible employee representatives in the dispute resolution clause. Where the ECAs left it undefined, the EAs indicated that employees can use a representative in the dispute resolution process. The interviewee indicated that this widening of the
scope for union involvement was a concession the organisation made to the union. The EAs also provide access to conciliation with respect to dispute settlement, whereas the ECAs hadn't included this option.

7.3.1.2 MC5

At the time of the interview MC5 had replaced one of its ECAs by an EA, whilst another ECA remained in place. The interviewees (MN16, MN17) indicated that the organisation was largely able to retain the flexibilities of the SIAs and ECA under the new EA, albeit some other concessions were made in the negotiation process. In contrast to the non-union ECA, the EA had a single union as signatory to it that was also actively involved in the negotiation process. The interviewees explained that another union had briefly shown up but hadn't actively participated in the process. It was further explained by management that employee representatives had had a substantial impact on the negotiations for the EA.

The economic circumstances of the organisation were further critical in shaping the outcomes of the EA negotiations:

“...the climate where the operation is not making money. So we had to educate the workforce in that regard that ‘right now guys with the high Australian dollar and the low [commodity] price we’re not a profitable organisation. So you know just be aware of all of that. So you got to understand the economics. So if you want 5 per cent year on year increases it is just not going to happen. And that is just going to send us to the wall.’ And so once we explained that to them they were able to work with us on that. Again the provisions of the Act, we would have that same conversation with them anyway, but there were some opportunities for us to offer some benefits that were not necessarily going straight into their pocket. So you know through that exercise as I say [union A] pulled out half way through the bargaining process, [union B] hung in there. And I think you know credit to them, and they’d proven themselves as a bit of a worthy partner in the relationship with the workforce. And we’ve committed to staying in contact with them.” (MN16)
Despite the detrimental economic position, the organisation committed in the EA to annual increases at least equal to the Consumer Price Index (CPI) compared with annual increases at management’s discretion under the ECA.

The EA further required management to provide 28 days’ notice in order to unilaterally adjust shifts and rosters compared with seven days under the ECA – although with the consent of the affected employees changes could be implemented at shorter notice.

Moreover despite the economic circumstances of the organisation, additional benefits were provided to employees under the EA in the form of income protection insurance and more generous parental leave. Although these provisions do not impede management’s prerogative, nor do they constrain flexibility, they do have an associated cost.

Lastly, under the EA there is also the scope to refer disputes to the Commission for conciliation and arbitration (only if both parties agree), which is in contrast to the ECA where these matters were dealt with internally.

### 7.3.1.3 MC7

The content of MC7’s EA and ECA, apart from the mandatory compliance clauses, was almost identical, confirming the manager’s comments in the interview that the successive agreements had high levels of similarity. The organisation had three unions as signatories to the EA, and it successfully fought off a bid from a fourth union to cover a section of their workforce. Management (MN25) argued that having a nominal expiry date for the EA after three instead of four years was: “the only thing we gave away”.

There were two other minor differences between the ECA and the EA. The dispute resolution provisions in the EA included the employees’ right to have representation plus the new provision provides access to the Commission for mediation, conciliation and arbitration. This was not the case in the ECA. The other matter was a minor tinkering with the redundancy provisions. Where in the ECA it was calculated pro-rata per complete months of service, in the EA it was based on years of continuous service.

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29 This claim by management was verified on the basis of the tribunal decision, however to ensure confidentiality the relevant case cannot be cited.
7.3.1.4 RC2

The EAs for RC2 were somewhat more restrictive on organisational flexibilities than the ECAs, and also included a number of extra costs. Two EA-ECA comparisons could be made. In contrast to the ECAs both EAs had union signatories. One of the agreements had two unions as a signatory, whereas the other just one.

In the shift from both ECAs to the EAs the type of annual wage increases in the agreements changed. Where in the ECAs these increases were dependent on the Commission’s annual wage review they had moved to fixed increases set at 2 per cent per annum under the EAs. In both instances, however, through individual performance management systems management retained the right to adjust employees’ remuneration – which was explicitly stated in the agreements. Also management’s right to roster according to operational needs and requirements was retained. No restrictions were found on management’s capacity to adjust rosters and/or shifts. The sole requirement under the agreements was that reasonable notice be provided.

There were changes in the dispute resolution clauses. The ECAs restricted who could be a representative in that it could only be another employee from the organisation. The EAs on the other hand provided employees with the freedom to choose their own representative. Furthermore, where under the ECAs the organisation used private arbitration this was changed to the Commission under the EAs.

Another difference in the EAs was in relation to the employer’s superannuation contribution. It moved from a contribution capped under the ECA at a maximum of 40 hours to all hours worked under the EA. The EAs also provided for more generous redundancy provisions than the ECAs.

The EAs also required the parties to put in writing any temporary transfers of employees to other sites, which somewhat restricts the organisation’s spatial flexibility by making it more bureaucratic. Previously management was able to make such decisions unilaterally under the ECAs.

Further differences between the EAs and ECAs were that one of the EAs contained a completion bonus for apprentices whilst the ECA it replaced didn’t. The other EA contained a more generous long service leave provision than the ECA.
7.3.1.5 RC4

RC4’s manager (MN11) argued that for their WA operations – which previously used SIAs – the organisation was largely able to replicate the arrangements of the ECA under its EA. The organisation used the EA, just as it had the ECA, as a safety net style agreement offering more generous annualised salary arrangements on top through their common law contracts.

There were a number of differences between the EA and ECA. Firstly, under the EA the organisation had introduced a five tier classification structure in order to comply with the modern awards. Secondly, management had to provide increased notice – from three to seven days – if it wants to change shifts or rosters under the EA. Changes can, however, be implemented more swiftly if it is with the consent of the affected employees. Thirdly, the dispute resolution clause in the EA was also different. Under the EA the parties can refer matters only to the Commission, whilst the ECA had also allowed for private arbitration. Lastly, the ECA merely stipulated the company’s compliance with its statutory obligation in relation to superannuation contributions; the EA was more detailed about the company’s obligations.

7.3.1.6 RC8

Under the EA that replaced RC8’s ECA management largely retained the existing flexibilities the organisation already had. The EA had four unions as signatory to the agreement, in contrast with the non-union ECA. Since the scope of the agreement also covered other states than WA, three of the union signatories were branches from other states – two different unions were party to the agreement. According to the interviewee, however, the unions had had a limited impact on the content of the agreement, although negotiations were still ongoing at the time of the interview. There were also 25 employee representatives involved.

Although the originally proposed EA was rejected by the employees, in the EA that was voted up the organisation retained its functional, numerical, spatial, temporal, and technological flexibility. With respect to remuneration the organisation moved from fixed annual increases ranging from 4.5-5 per cent per annum under the ECA to following the minimum wage case decision of the Fair Work Commission under its EA. Another difference was the standardisation of overtime payments under the EA, these
were site specific in the ECA. Overall the additional hours/overtime payments under the EA attracted a higher allowance than under the ECA.

7.3.1.7 Conclusion of the ECA-EA comparison

In conclusion, there was a degree of patchiness in relation to the extent of change between the ECAs and EAs. In terms of annual increases one mining company and one contractor moved away from discretionary increases to fixed annual increases. In relation to temporal and spatial flexibility the three contractors under their EAs had to provide increased notice to employees when management unilaterally wanted to change hours of work (including shifts and rosters) or the place of work. The EAs of the three mining companies and two contractors moreover had a wider scope for employees to choose their representatives (including unions), and more frequently left scope for conciliation as well as a greater role for the Commission. In general, while some differences were noted, in most instances the organisations had been largely able to preserve the flexibilities they had enjoyed under their ECAs. Thus the EAs didn’t place too many new restrictions on the way operations were managed or the way in which work was performed.

7.3.2 Analysing the flexibility of EAs

The second set of documents analysed were EAs. The content flexibility analysis of these EAs provided insight into the flexibilities that management in the WA mining industry have at their disposal on the basis of the industrial agreements in relation to those employees that were previously covered by SIAs. Twenty-one EAs from 14 organisations were analysed (MC1, MC2, MC3, MC5, MC7, MC11, MC12, RC1, RC2, RC4, RC7, RC8, RC9, RC10). These included the EAs that were used in the EA-ECA comparison. The content analysis focused on: functional, numerical, spatial, temporal, technological, and remuneration flexibility (see Table 7.2 for definitions). Through the content analysis of the EAs inferences can be made about the flexibility that management have at their disposal under these industrial instruments.
Table 7.2 Definition of organisational flexibilities

<table>
<thead>
<tr>
<th>Flexibilities</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>Functional</td>
<td>“how is labour used”</td>
</tr>
<tr>
<td>Numerical</td>
<td>“how much labour is used”</td>
</tr>
<tr>
<td>Spatial</td>
<td>“where can labour be used”</td>
</tr>
<tr>
<td>Temporal</td>
<td>“when can labour be used”</td>
</tr>
<tr>
<td>Technological</td>
<td>“what technology can labour be made to use”</td>
</tr>
<tr>
<td>Remuneration</td>
<td>“how is labour remunerated”</td>
</tr>
</tbody>
</table>

Based on Cooper et al. (2009) and Kuruvilla and Erickson (2002)

A number of the larger resources contractors who have numerous industrial instruments with coverage for WA (RC3, RC5, RC6, RC12, RC13) could not be included in the content analysis, as it could not be established which of their EAs covered previous SIA workforces. Instead 66 of their greenfield agreements for their major clients where they indicated that SIAs were frequently used were assessed, these are discussed in section 7.3.3.

7.3.2.1 Functional Flexibility

To analyse functional flexibility the EAs were analysed with respect to the clauses dealing with employee duties – including other clauses which dealt with employees’ higher duties. It was evaluated whether the agreements placed any restrictions on the type of duties that an employee can perform, thus also whether the EAs contained any demarcations. It was further considered whether management had the capacity under the EAs to alter the role of the employees.

It was evident that employers weren’t faced with a re-emergence of demarcations in their EAs. In none of the agreements were any restrictions found on the types of duties that employees could perform. For example in the case of one of the mining companies (MC3) the EA didn’t contain any reference to employees’ duties at all and left it entirely open. The bulk of the organisations, however, did include a clause specifically dealing with the employees’ duties and these continued to provide for substantial functional flexibility.

It was found in only two of the 14 organisations that management under the EAs were required to provide notice when they wanted to change the employees’ duties. This
notice was not specified for one miner (MC2), whilst another (MC11) had to provide 14 days’ notice. The manager (MN31) indicated that the increased notice period (MC11) was the result of the bargaining process and argued that it curtailed the organisation’s flexibility.

In three organisations, two contractors and one mining company, a clause was built into their EAs specifying compensation for higher duties (MC5, RC1, RC4). Although this doesn’t restrict the type of work that an employee can be required to perform there is an associated cost. The other organisations had the capacity in their EAs to change duties without higher duties being stipulated.

Under the EAs management also had the capacity to reclassify employees to other roles, in most instances this was at entirely managements’ discretion. No restrictions were found in the analysed agreements, and in the case of one of the contractor’s EAs (RC1) it was explicitly underlined that management had the ability to do so.

7.3.2.2 Numerical Flexibility

Numerical flexibility was analysed by determining whether the EAs placed any restrictions on the use of sub-contractors by the organisations. No such restrictions were found in the EAs, despite it being flagged as one of the managers’ concerns (MN8, MN13, MN20, MN32, MN34).

7.3.2.3 Spatial Flexibility

Most of the organisations had reasonable access to spatial flexibility. No restrictions were found at all for a number of organisations (MC2, MC3, MC12, RC1, RC4, RC7, RC8, RC9, RC10). Two of the organisations (MC7, MC11) were required under their EAs to provide a stipulated period of notice to affected employees – respectively four weeks and 14 days – whilst others (MC1, MC5) were required to provide ‘reasonable’ notice. In the case of a contractor (RC2) the organisation had the capacity to make changes temporarily to the employees’ place of work. The organisation was, however, required under its EA to confirm such temporary changes in writing. Although the required notice periods don’t restrict the capacity to alter the place of work, it does restrict the speed at which such changes can be implemented.


**7.3.2.4 Temporal Flexibility**

Temporal flexibility was evaluated by looking at clauses relating to rostering arrangements, hours of work, additional hours, overtime arrangements, and annual leave provisions. It was assessed whether there were any restrictions on these arrangements and if management had the capacity to make changes to them.

In the content analysis very few limitations were found in the EAs in relation to the types of rosters or work patterns that the organisations could implement for their operations. Only one of the contractors (RC10) was restricted by its EA and had a restriction on the type of roster pattern that could be used. The restriction was on the number of weeks (two) that employees could be on site.

It was further possible for management to unilaterally change rosters under all assessed EAs. What is evident from the analysis is that there is a difference between those organisations (MC1, MC2, MC3, MC7, RC1, RC2, RC8, RC9, RC10) that weren’t required to provide notice or only had to give ‘reasonable’ notice compared to those that had to adhere to fixed periods (MC5, MC11, MC12, RC4, RC7), these notice periods ranged from seven to 28 days.

Also no restrictions were found on managements’ capacity to change starting times and/or hours of work in the bulk of the EAs. Only two mining companies (MC11, MC12) had terms in their EAs which dealt with this. MC11 was required to provide appropriate notice, whilst MC12 was required to pay employees an allowance if their start and finish times were subject to change. Furthermore in the case of MC12, if insufficient notice is provided, under this EA the employees may determine whether or not to accept the proposed changes.

The bulk of the EAs moreover enabled management to require employees to work reasonable additional hours. The majority of analysed EAs contained a clause explicitly stipulating this. Only two mining companies (MC3, MC5) didn’t have such a clause in their EAs. A restriction that could be found with respect to working additional hours or shifts in the evaluated EAs was that a 10 hours break between shifts was required for three of the organisations (MC5, MC7, RC1).
Employees were paid additionally for working overtime for only two of the organisations under the EAs (RC2, RC4). The other organisations had an overtime component built into their annualised salary arrangements or it was absorbed in the flat rates. In the case of one of the mining companies (MC7) employees under the EA were offered either payment for the additional shift at normal rates or alternatively offered time off in lieu.

It was further evaluated how the EAs dealt with annual leave, as according to interviewees (MN12, MN28, MN32) it affected rostering. It was observed that a number of EAs only contained minimal reference to annual leave provisions (MC1, MC2), whilst others (MC3, MC5, RC9) adopted the modern award annual leave clause or a variation of it. The variations enabled management to force employees to take annual leave as directed (RC4, RC7). In other instances it (RC8) provided employees with the possibility to cash-out annual leave accumulated above the National Employment Standards (NES) minima, whilst it also (RC1) allowed management to cash accumulated annual leave in excess of the NES. In the case of MC12, for example, the maximum annual leave that could be accrued was capped, and everything in excess of that was cashed out. There was thus some variation in the annual leave provisions across the EAs.

7.3.2.5 Technological Flexibility

The analysed EAs hardly dealt with, or imposed any restriction on, technological flexibility. Only the EA for one mining company (MC12) contained a clause which dealt specifically with the introduction of new technology and this clause required the organisation to consult affected employees. Beyond this, there were no clauses placing constraints on technological flexibility.

At the same time it was found that the consultation clauses in EAs (FWA s205), especially the model clause, could in certain circumstances potentially restrict the introduction of new technology where it has a major impact on employees. Nevertheless managers did not raise any concerns regarding this particular clause. In the case of the analysed agreements less than half of the organisations (MC3, MC7, RC4, RC8, RC10) opted for the model clause. The other organisations had variations of the model term in their EAs (MC1, MC2, MC5, MC11, MC12, RC1, RC2, RC7, RC9). As
the interviews were concluded before the *Fair Work Amendment Bill 2013* came into operation the original model clause was found in the agreements.

**7.3.2.6 Remuneration Flexibility**

In terms of remuneration flexibility it was analysed whether the agreements stipulated annual wage increases or if these were at management’s discretion. Furthermore, it was assessed whether the agreements dealt with individual performance management systems (IPMS), and if the EAs placed any restrictions on organisations’ ability to use these. It was also assessed whether the agreements stipulated penalty rates, allowances and loadings.

When analysing the clauses in the EAs in relation to annual wage increases a number of different provisions were found. Two of the 14 analysed organisations had fixed annual wage increases stipulated in their EAs (MC3, RC2), two organisations were committed to CPI increases (MC5, RC7), and two were adjusting their agreement annually on the basis of the Fair Work Commission’s Minimum Wage Case Decision (RC4, RC8). The remaining eight organisations (MC1, MC2, MC7, MC11, MC12, RC1, RC9, RC10) had the capacity to adjust annual increases at management’s discretion.

Apart from one company (MC2), no restrictions were found on the organisations’ capacity to use IPMS (MC1, MC7, MC8, MC10, MC11, MC12, RC1, RC2, RC7, RC9). The restriction on MC2’s use of its IPMS was that the EAs specified that the organisation could not use it as a tool to reduce the employees’ wages. Increases were, however, at management’s discretion.  

None of the EAs of the mining companies contained any penalty rates as these were either absorbed in the annualised salary (MC1, MC2, MC3, MC7, MC11, MC12) or in the composite hourly rate (MC5). For the contractors the findings were patchier. Two of the organisations absorbed the penalty rates in their flat / composite hourly rates (RC1, RC10), for one contractor (RC4) it depended on the employees’ roster, whilst for two others (RC8, RC9) penalty rates were included in the EAs.

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30 It is not debated here whether or not management’s capacity to use IPMS as a possibility to reduce wages is reasonable or not. It is merely observed that in the case of MC2 EAs the agreements restrict the company from having this possibility which could be perceived as curtailing management’s prerogative. The other agreements did not contain these clauses.
It was found that most of the EAs contained few loadings. All the agreements at least provided for a casual loading varying between 20-25 per cent. Annual leave loadings were commonly absorbed in the existing salary arrangement, only in the EAs of the contractors (RC9) was there a separate annual leave loading in the agreements. Moreover, only two of the organisations (RC7, MC11) provided a loading for night shifts.

More common than penalty rates and loadings were components in the annualised salary arrangements or flat / composite hourly rates that reflected the allowances in the agreements. For example shift and Fly-In-Fly-Out (FIFO) allowances could be found in a number of the EAs (MC1, MC2, MC3, MC7, MC11, MC12, RC1). Two organisations (RC1, RC9) further provided a site allowance in recognition of specific work conditions. One of the mining companies (MC3) had an on-call allowance in its EA. One of the contractors (RC4) had allowances for employees dealing with laundry, first aid, tools, and early and late work. Three of the contractors (RC7, RC8, RC9) had a service bonus allowance, whilst a leading hand allowance could be found in two of the contractors’ EAs (RC2, RC7). The interviewees didn’t express any issues in relation to the allowances in their agreements, nor did they indicate that they had observed any substantial differences in comparison to their SIAs or ECAs.

7.3.2.7 Union friendly provisions found in the EAs
A number of interviewees indicated that under the FW regime their organisations had included more union ‘friendly’ provisions in their EAs. Given the regulatory change, this was an area where one might expect to find some difference in the agreements, yet union friendly provisions were only found in the EAs of four organisations (MC3, MC12, RC2, RC4). The clauses included: union fees deductions (MC3); explicit recognition of the unions as possible employee representatives in dispute resolution procedures (RC4); paid trade union training leave (RC4); paid employee representatives during negotiations (MC12); and a memorandum of understanding between management and the unions (RC2). All of the EAs, however, provided unions with the capacity to act as representatives for employees under the dispute resolution clauses.
7.3.2.8 Conclusion of the EA flexibility analysis

It was found that management of the 14 organisations under the 21 assessed EAs overall had access to substantial levels of the various flexibilities. With respect to functional, numerical, and technological flexibility under the EAs management enjoyed almost unfettered access to these flexibilities, whilst in relation to spatial and temporal flexibilities five of the 14 organisations were required to provide ‘reasonable’ or a stipulated notice period when management wanted to unilaterally implement change. At the same time acknowledgement should be made of the appropriateness for employees to be provided with a reasonable notice period in relation to changes made to their work rosters or location of employment. What was also found in the EA content flexibility analysis was that remuneration flexibility was largely maintained. Only two of 14 organisations were faced with fixed annual increases, and eight still had the increases entirely at management discretion, whilst the remaining four had increases linked to CPI or the Fair Work Commission’s minimal wage case decision. Furthermore, IPMS which had been an instrumental part of the organisational cultures that management had been able to establish through the SIAs weren’t restricted in their operations by the content of the EAs.

7.3.3 The contractors’ greenfield agreements

The greenfield agreements that were assessed were from the contractors (RC1, RC3, RC5, RC6, RC11, RC13). Interviewees (MN9, MN14, MN34) from the contractors indicated that it was particularly in the greenfields’ space where the removal of SIAs had impacted on them. A number of these contractors weren’t included in the other document analysis and therefore assessing the greenfield agreements at least provided some insight as to how the removal of the SIAs had impacted on them.

The analysis only included those agreements whose scope covered WA based operations and that were for the larger mining companies, as management indicated that here SIAs were previously used. A total of 66 greenfield agreements were analysed on their numerical; temporal; and remuneration flexibilities, as it was proclaimed that these were the areas where difficulties were being experienced with these agreements under the FW regime. Only a limited analysis of the content of the greenfield agreements was conducted as it couldn’t be ascertained that they were really directly related to SIAs and their removal.
The content of the greenfield agreements was far more extensive and prescriptive than the other EAs that were analysed. Almost all of the greenfield agreements contained fixed annual increases (RC1, RC3, RC, 5, RC6, RC11), except in two instances where their lifespan was relatively short – less than 18 months (RC3, RC13). The agreements included in relation to remuneration a range of additional allowances, loadings, penalties and provisions that hadn’t been observed in any of the other analysed industrial instruments.

These greenfield agreements also contained a substantial number of procedural matters, particularly in relation to rostering arrangements and the work of additional hours. None of the analysed greenfield agreements contained any restrictions on the use of contractors, in contrast to what was suggested by managers and industry experts.

From managements’ perspective it wasn’t, however, surprising that they perceived the greenfield agreements to be more restrictive since the content of these agreements was clearly more prescriptive than SIAs or ECAs were. Therefore the nature of the greenfield agreements was contrary to the industry’s preference for having the employment relationship regulated by internal rather than external regulation.

7.4 The Social Contract under the Fair Work regime

Much of the commentary in the lead up to the FW Act suggested that the Act would force a change in the labour-management social contract, whereby unions would (re)gain a more prominent role. This increased role for unions in the agreement making process threatened to some extent the preferred ER/HR arrangements of management in the WA mining industry. This subsection of the findings considers whether under the FW regime the social contract between management, the employees, and the union was altered. The relationship between management and unions will be considered first, followed by the relationship between management and the employees.

7.4.1 The management-union relations

With respect to the management-union relations under the FW regime in relation to agreements concluded for employees previously covered by SIAs it was found that unions, in contrast to under the SIAs, had gained a greater role in the agreement
making process. The extent of the unions’ involvement, however, differed from negotiation to negotiation. Management had different experiences with different unions and so developed preferred union strategies.

The management-union relationship in industrial agreement making changed for a substantial number of the organisations under the FW regime. Sixteen of the 17 organisations that concluded EAs for their previous SIA workforces had at least one union signatory to their EAs, which was in stark contrast with the non-union SIAs and ECAs. Due to the employee representational rights under the FW regime managements’ ability to avoid the unions has been curbed. Under the FW regulatory regime management is no longer able to escape a union relationship in relation to industrial agreement making.

Union involvement in the agreement making process doesn’t necessary mean that the unions had an influence on the outcomes. The interviewees indicated that although the unions were increasingly involved that their capacity to shape and influence the outcomes was limited. The management strategy to replace their ECAs by EAs well before their nominal expiry date played a critical role. The level of union membership in the organisation was also most likely also of influence, as managers described their workforces as largely non-unionised (MN03, MN05, MN08, MN16, MN23, MN27, MN29, MN30, MN33). The interviewees further claimed that unions only have substantial bargaining power in relation to greenfield agreements (MN08, MN09, MN13, MN14, MN16, MN34). At the same time, however, organisations (MC7, MC8, MC10, RC8, RC9, RC11, RC12, RC13) were witnessing increased union activity in their operations under the new regime in the form of union right of entry requests.

The past relationships between unions and organisations differed across the WA mining industry which affected the management-union attitudes. It was described in Chapter 3 that there were historical tensions between management and unions in the industry. This was also the case for a number of the researched organisations, whereas other organisations had, and continued to have, reasonable relations with unions. Three of the contractors (RC4, RC11, RC12) argued that they always maintained their relationship with a union:
“We’ve always had a very good relationship with especially the [union] in Western Australia.” (MN32)

“We’ve got a reasonable relationship with them [the union]. They accepted broadly we do the right thing for our employees, from time to time we get something wrong. If the union comes to us and says ‘you’ve got a problem here’ they know that we would fix it.” (MN11)

For those organisations that hadn’t maintained relationships with unions, in two instances during the EA negotiations reasonable relations were established, according to their managers (MN03, MN16). Interviewees explained that, sometimes to their own surprise, the relations with some of the unions in the EA negotiations were co-operative and constructive (MN03, MN11, MN16, MN30, MN32).

Managements’ view on the unions further differed from union to union, whereby the relations with respect to agreement making under the FW regime were found to be constructive with some and unproductive with others. In the case of one of the mining companies (MC2) the reactions by one of the eligible – more militant – unions were described as “combative”. Another miner (MC5), as mentioned earlier, had the experience of an eligible union initially participating in the bargaining process and later on withdrawing.

“The [union] showed up twice, showed not a lot of interest and used it as an opportunity to rattle the can and go and do a membership drive. And when that proved fruitless, and they told us, they stopped showing.” (MN16)

Interviewees further argued that although it was easier for unions under the new regime to have a seat at the bargaining table, and to be a signatory to an EA, that this wasn’t necessarily reflected by an increased input from the unions in the agreement making process.

“Whilst we invited the unions to participate in that process [EA negotiations] only one union turned up. And they turned up right at the end to register the agreement. That was the [union]. The other unions just didn’t turn up.” (MN05)
Management in a number of instances (MC1, MC2, RC4, RC12) argued that for the EA negotiations they had actively sought to invite unions to provide feedback on draft agreements. From the unions’ perspective, however, these gestures were seen as insincere. According to union officials (TU08, TU09) management were merely “fireproofing their businesses”. Nonetheless some unions still opted to become signatories even in instances where their involvement in the negotiations of the EAs was limited.

It was further observed that management in a number of organisations took a strategic approach by trying to influence which unions were involved in the negotiation process. One of the mining companies (MC7) successfully fought off an attempt from a specific union to be involved in the agreement making process. An employer association representative also explained that organisations undertook strategic choices to influence which parties they would be negotiating with.

“For instance there was one particular company where we knew well and truly we would have the [union] at the negotiating table, but then the strategy became how do we restrict it to just that one union, which ultimately we did successfully do.” (EAR08)

Specific unions were sought out to be involved in order to keep others out. Interviewees (MN04, MN05, MN15, MN32, EAR08) explained that organisations sometimes were able to take advantage of inter-union tensions and use this strategically to only have those unions that management preferred involved in the negotiations. As a manager for one of the contractors (RC11) explained:

“So where we see the [union A] knocking on contractors’ doors on the same site we will immediately go and approach [union B] or another union that we’ve got a really good relationship with, and say ‘Let’s sit down and let’s get this agreement negotiated quickly. You guys don’t want [union A] on this site, you want to be the ones representing the members here’, so that’s the way we’ve dealt with it. Unions will hate each other just as much as they hate companies, so you can generally leverage off that.” (MN32)
Although managers in some instances involved “preferred” unions to play these out against less desirable ones, managers continued to express a strong preference for direct negotiations with employees, preferably at the individual level (MN05, MN18, MN31, MN32, MN33). According to the interviewees union negotiations tend to play out differently to direct employer-employee negotiations under the FW regime.

“So when it comes to the barriers to bargain for a new agreement they are often not around money, or necessarily rosters’ terms and conditions. They are more so around union building type clauses like delegates’ rights, use of subcontractors, union involvement in inductions, nominated delegates, an issue on one site where they’re trying to leverage an outcome at point X when we are bargaining for an agreement at site Y. You don’t get any of that sort of stuff clearly when it comes to the individual bargaining stream.” (MN34)

Overall the findings would suggest that the role of the unions in the WA mining industry in relation to employees that were previously covered by SIAs increased. At the same time although a greater role was observed in relation to their involvement with the industrial agreement making process – from previous exclusion to at least some form of involvement – their influence and capacity to shape the actual process still appeared to be relatively limited. The greenfield agreements were the notable exception. Although managers acknowledged that in some instances the relations with the unions in the agreement making process were constructive, at the same time they didn’t appear to embrace their involvement. It was evident that preferences between the various unions existed whereby managers indicated that they made strategic choices to ensure they only had to deal with those unions with whom they were confident that they could achieve the most favourable outcomes for their organisations.

7.4.2 The management-employee relations

The management-employee relationship, the other part of the labour-management social contract, was also affected by the FW regime. The collective nature of the new regulatory regime provided employees with a greater involvement in the negotiations. The involvement of a substantial number of employee representatives in EA
negotiations, including self-representation is indicative of employees’ greater capacity to influence the industrial agreement making process.

One element of organisations’ preferred ER/HR arrangements that management argued they wanted to retain was the practice of direct employer-employee relations, which they also wanted to see reflected in the negotiations of their industrial agreements – although it has to be recognised that SIAs were commonly offered on a take-it-or-leave-it basis. Direct employer-employee negotiations under the FW regime were, however, complicated by the greater capacity for unions to be involved. Nonetheless it was found that some organisations (MC1, RC1, RC7, RC9, RC10, RC12) were concluding agreements directly with employees without union involvement in the negotiation process, which was regarded as preferable by management (MN04, MN05, MN08, MN18, MN27, MN28, MN31, MN32, MN33).

It was found that management made strategic choices which would increase the likelihood of direct negotiations with the employees. For example, those instances where the EAs were concluded directly with employees tended to be situations where agreements were negotiated with relatively small groups of employees (MN02, MN05, MN18, MN24, MN28). A number of the contractors explained that their organisations (RC1, RC9, RC12, RC10) had a deliberate strategy of negotiating agreements with small groups of employees, in some instances, because of the better outcomes that were achieved.

“It was a very small number of people. I forget the number, it was probably only about ten. So dealing with a small group was a lot easier than dealing with a hundred. The same with [division] that was a start-up company, so we were talking to probably a group of eight or ten people there as well.” (MN24)

Others argued that it was also an employee preference to have direct negotiations rather than to have unions involved.

“Yeah, the employees basically would nominate someone in their own group. And then look, we’ve voted up a number of agreements after the legislation has come in, and you know, the employees can have union
representation and what not. And in mining, even though there is [sic] people who knew that they could have a union represent them, they much preferred having someone within their own group representing their interests.” (MN02)

Lastly, what was evident from the interviews was that managers felt that under the new regime there was an even increasing onus on them to maintain good relations with their employees (MN04, MN05, MN07, MN08, MN14, MN16, MN17, MN18, MN28, MN29, MN32, MN33). The interviewees indicated that under the FW regime the workforce had a greater capacity to challenge the preferred arrangements, and hence it was considered essential that good relations were maintained so that the existing arrangements could be preserved.

7.5 Operating without SIAs in the WA Mining Industry

This fifth section of the chapter reveals what management reported about operating under the FW regime and whether in their perception the removal of the SIAs had affected their ability to manage operations. Overall it was found that although in some instances some small differences had arisen as a consequence of the legislative changes that there haven’t been any fundamental changes to the organisations’ operations, workplace relations, or organisational cultures.

The majority of interviewees (MN02, MN03, MN05, MN14, MN16, MN17, MN18, MN23, MN24, MN26, MN28, MN29, MN33) who concluded EAs under the FW regime explained that their new industrial instruments hadn’t impacted on the way that work in their organisations was being performed by the employees. Thus there hadn’t been a reappearance of some of the restrictive workplace practices that had hampered productivity in sections of the WA mining industry before the SIAs were implemented. This was, for example, emphasized by one of the managers of a mining company that had historically implemented the SIAs partly to overcome some of the workplace practices that management had perceived as restrictive.

“We have not had demarcations in our business for 20 years. There was a fundamental change in our business in the early nineties, between ‘91 and ‘93. And from that time things like demarcation have not been an issue in our business. People go to work, and work, and think about work, think
about how we can improve, how we do things without worrying about artificial lines and say ‘I can do that, but I can’t do that’. That is just not the way our business operates." (MN33)

Interviewees (MN05, MN27, MN29) were, however, cautious about proclaiming their preferred workplace relations had been preserved as they indicated that the ECAs had played a critical role in postponing the full impact of the agreement making provisions of the FW regime.

“I think [changes in the ER arrangements] hasn’t manifested itself yet in our industry, right, because the agreements [ECAs] haven’t expired yet.” (MN05)

A minority of interviewees (MN12, MN31) argued that the EAs made under the FW Act had had a detrimental impact on their daily operations. As was highlighted in the content analysis a couple of the EAs had increased notice periods which would affect the speed at which management could implement change. Also new clauses in the EAs at times affected the organisations’ operations, as exemplified by one interviewee from a mining company (MC3).

“The new on-call provisions would have had some impact on how we manage maintenance coverage, giving us the right to require some employees to be on-call. It may have resulted in some disincentive for employees to volunteer to be on-call, because in some locations the on-call payment is lower than what employees were previously receiving.” (MN12)

Although the existing organisational flexibilities were largely retained in the EAs, as outlined in section 7.3, some changes did take place that impacted on the organisations’ workplace practices. Interviewees argued that they enjoyed greater flexibility under the previous regime, which the content analysis of the EAs would predominantly support. Nonetheless the majority of required flexibilities were maintained, which was also reflected in the number of matters still at managements’ discretion. Furthermore, it also has to be considered that SIAs provided management with almost unrestrained levels of prerogative and control.
“Yeah look I think if you had done it using an individual statutory agreement we would not have been fettered as we are now in this agreement. So the agreement that we have managed to negotiate is still good but, saying that, we still had to concede position on some aspects where we probably would have preferred not to. And yes, it has decreased our flexibility compared to our last agreement and compared to what was in the AWAs.” (MN31)

It was noted by interviewees (MN02, MN04, MN05, MN07, MN09, MN11, MN12, MN16, MN17, MN31, MN32) that the FW regime impacted on some aspects of the daily management of employees and operations, including the way in which agreements are administered, work could be rostered, and change can be implemented.

It has to be stressed, however, that most of managements’ concerns were in relation to the broader provisions of the Act rather than matters in direct relation to the removal of SIAs. For example, a number of interviewees were quite critical about how the new regime particularly restricted their capacity to roster remote work (MN16, MN17, MN28, MN31, MN32) as well as the FW Act’s annual leave provisions (MN12, MN14, MN28, MN32). Although these issues relate to changes in the regulatory environment, and can have cost implications for organisations, they are not directly associated with the removal of the SIAs and also do not directly pose a threat to managements’ preferred model of workplace relations.

“It is hard to make the roster fit within the Fair Work legislation…. Under the AWAs the annual leave component could be built in that period off site, whereas now because of the legislation it is not 100 per cent lawful to do it that way.” (MN09)

“Every time I kind of read it [the FW Act] it definitely gives the impression that it is designed for people like ourselves [researcher + manager]. Five days, we work Monday to Friday and then you got the weekends off. And it makes it very difficult or more difficult when you are trying to look at leave accruals, and you know payment, they [the Act] might talk weeks but for us
Interestingly, with respect to the administration of the agreements it was remarked by a number of interviewees (MN02, MN04, MN08, MN23, MN32) that the collective instruments (both ECAs and EAs) were easier to administer than the SIAs, and therefore to some extent preferable from an administrative point of view.

“I just think it is probably easier, easier from an administration point of view, much easier to administer. You know to say to somebody ‘you got a job, there is your letter, and these are the conditions you are working under’ whereas under the old AWA it was very much ‘here is your employee agreement, you need to have a read of that, you need to sign it and then we need to go and register it.’ We had to register it. That was a bit of an administrative nightmare to be honest.” (MN24)

Another major concern of the industry in relation to the removal of the SIAs was the increased prospect of protected industrial action materialising under the FW regime. Operations of the majority of researched organisations thus far had also not been affected by industrial action, the vast majority of organisations in the WA mining industry had not been exposed to protected industrial action when concluding EAs. This could partly be attributed to the ECAs that were still in-term. The transitional provisions regarding early replacement of old transitional instruments provided them with further protections when replacing these ECAs which help to explain the industry’s limited exposure so far, especially for the mining companies.

“No we haven’t had any major industrial action, we’ve had the odd, you know, union coming to site to visit employees about a safety matter or something like that. But certainly the stuff that you’ve heard in the media we haven’t been through with the Gorgon project and the industrial action there...We haven’t been exposed to that sort of thing.” (MN02)

Two of the contractors, however, were impacted by protected industrial action (RC8, RC11). The manager from one contractor (RC8), for example, claimed that it had gone
from being a reliable contractor to one that was ‘all of a sudden exposed to industrial action all over the place’. Overall, at this point in time, ensuring that organisations weren’t exposed to protected industrial action was a greater concern for the organisations in relation to their industrial agreement making than attempting to alter existing workplace practices or labour-management relations.

Managements’ responses revealed that the industry’s preferred HR/ER arrangements, which they had been able to implement with the SIAs, were largely preserved. This meant operationally it was business as usual – although there was increased union involvement in the industrial agreement making across the industry. The preservation of the existing practices was partly due to the use of the ECAs, whilst also other strategic management choices which had enabled these organisations to retain what they had. There is, however, still concern about being able to ensure that these preferred arrangements stay in place after future negotiations under the current regulatory regime. Thus despite being able to retain their current arrangements some interviewees were still concerned about the future:

“It is all at risk, right now. All of this is at risk because of the framework and because of the legislation.” (MN05)

Although legislative changes, especially the introduction of the SIAs, played a key facilitating role in enabling management to initially implement the desired workplace reforms, it also has to be recognised that in order to realise the actual reforms that not only the industrial instrument was changed but that management also altered their management styles, the production processes, and organisational cultures. Moreover, the workplace relations changes were further embedded in management practices and organisational policies and procedures. What management had achieved, whilst being facilitated by legislation, should thus not solely be attributed to the changes in the regulatory environment. Hence under the FW regime, which altered the industrial agreement making process and removed the SIAs, it was therefore unlikely that this alone would bring undone the industry’s preferred model of workplace relations, which are still strongly embedded within the organisational cultures and practices.
7.6 Differences between Resources Contractors and Mining Companies

Overall the findings of this research reveal that the consequences of the removal of the SIAs were fairly similar for the mining companies and contractors in the WA mining industry. Nevertheless several differences in their experiences under the _FW_ regime could be found, whereby these differences can be attributed to the different roles that the organisations have in their supply chain.

It was evident from the strategic choices of both the mining companies and contractors that industrial certainty was a key motivation for both sets of organisations. The strategic choices made in order to preserve the organisations’ preferred ER/HR arrangements, however, differed somewhat between the two groups.

The choices that the contractors could pursue under the _FW_ regime were more limited than those of the mining organisations. This was largely driven by the fact that in order to win work the contractors needed to demonstrate that they wouldn’t expose their clients to the threat of protected industrial action. Managers from the contractors explained that there is such a strong push by clients in the industry to have industrial instruments that are in-term (i.e. before their nominal expiry date) that it wasn’t feasible to operate on agreements that had expired. This demand, in combination with the more limited agreement making options available under the _FW_ regime meant that contractors were facing increased difficulties when trying to get new agreements – EAs and greenfields – in place.

In contrast to the SIAs, the shift from individual to collective bargaining provided employees with increased bargaining power, whilst in the greenfields sphere the unions are playing a more critical role under the _FW_ regime.

“*And again we were trying to negotiate on one hand a price with the client and on the other hand we are trying to negotiate rates with the union. And they’re aware of that, you know, it is not hard to work out what’s going on. So they were obviously trying to hold out for as long as they could, and push as hard as they could. And we were a bit caught in the middle between the two.*” (MN08)
“Well I suppose in some ways in a lot of the discussions that I had with managers, it is how cheap can we get out of this, not what would we want.... They are heading us up for a pay rise and how much... how little can we get away with. So the whole concept of enterprise bargaining, we’ve lost our way.” (MN09)

“...every time we are planning to win a new project we now have to look at what is our strategy going to be. Do we have an agreement to cover that site whereas before you could give someone an AWA or ITEA and there was no sort of industrial action or anything like that. [Contractor] hasn’t had any industrial action, we’ve been pretty lucky here, but I would say the Fair Work Act has made things a lot more complicated.” (MN02)

Where contractors relied heavily on in-term industrial instruments, the mining companies had a less rigid attitude towards expired industrial agreements, despite facing similar issues. This was reflected in the fact that a number of these organisations still allowed sections of their workforces to remain on expired SIAs. It was also found that a number of the mining companies thus far hadn’t negotiated under the FW regime, as they continued to operate on in-term ECAs and SIAs that had reached their nominal expiry date. All the contractors on the other hand concluded new agreements under the FW regime. For the contractors, because of the aforementioned factors, operating on expired agreements wasn’t a feasible or desirable strategy.

7.7 Management Agreement Making Strategies under the FW regime

Throughout this chapter several managerial strategic choices have been highlighted from the organisations in the WA mining industry that were made in relation to their industrial agreement making. What was evident from all the varying strategic choices was that it was managements’ goal and objective to preserve as much as possible of their preferred HR/ER arrangements which they had successfully implemented through the use of SIAs combined with extensive workplace policies and practises. At the same time managers wanted to ensure that their operations weren’t disrupted by industrial action arising from EA negotiations. None of the managers stated that their organisations sought drastic changes to their current workplace practices or capacity
to manage operations. It was thus predominantly a matter of ensuring that it was business as usual.

One particular management strategy that was evident was postponing having to engage with the *FW* regime. The life of their preferred regimes was prolonged by the heavy reliance on ECAs throughout the industry. As discussed in the previous chapter, management en masse put in place ECAs in the transitional period, which had the subsequent consequence that the need for management to engage with the *FW* regime in relation to the industrial agreement making provisions was initially minimised. The existence of the ECAs allowed, for example, six organisations to not conclude any new EAs for the sections of their workforces that used to rely on SIAs.

In relation to the agreement making processes under the *FW* regime managements’ strategies were aimed at maintaining as much of the existing preferred ER/HR arrangement as was feasible. Therefore different approaches, such as individual consultation, were used to achieve the desired outcomes. One of the managers further argued that because of the non-union status of operations that this had further contributed to the successful retention of the preferred workplace relations arrangements:

“And you would expect that... when you go from a non-union situation into the Fair Work Act, I think you probably get the benefit of one agreement that is probably still going to be ok. In other words it is going to take some time for it to revert back. So it is probably the agreement after that one that’ll be the difficult agreement.” (MN05)

The strategic choices in relation to industrial agreement making were heavily influenced by the avoidance of protected industrial action. One of the ways organisations were able to avoid the exposure to protected industrial action was through the early replacement of the ECAs that had been implemented in the transitional period. It was a risk free strategy since the *transitional provisions* allowed for a direct replacement of these old instruments by the EAs without having to go through the process of terminating the former. Hence interviewees indicated that their organisations sought to replace their ECAs well before their nominal expiry date. They were also able to circumvent the application of the good faith bargaining (GFB)
provisions as long as they concluded their EAs three months before the nominal expiry of the ECAs.

Management also adopted different approaches, depending on organisational preferences, in relation to the coverage of their EAs. Again protected industrial action was a key motivation as to why a number of the organisations opted for the coverage in their EAs that they had. Managers explained that when agreements are broken-up and the expiration of dates of these agreements are staggered that the industrial risk can be better contained:

“We considered going for a new national agreement that would cover all of our operations but for strategic reasons decided not to and to maintain a state by state approach.” (MN12)

“And you got a strategy. You either go for a collective agreement that covers the whole of WA as a contractor, that means once every 3 or 4 years your whole operation is exposed. Or you go for a whole bunch of site specific ones that will have different start finish times, so you are only ever exposed in one spot, which is what we’ve done.” (MN08)

“We are breaking up the agreements in geography and we are staggering the agreement dates so that they will never line up for one big agreement.” (MN05)

At the same time, however, the coverage of the agreements, according to interviewees, was motivated by a desire to preserve preferred arrangements. Management indicated that agreements with smaller groups of employees delivered better outcomes, whereby this was partly attributed to the reduced involvement of unions under these circumstances – as discussed in 7.4.2.

**Conclusion**

The findings in this chapter illustrated that more than four years after the FW legislation became operational that management in the WA mining industry largely were able to preserve the industry’s preferred workplace relations, despite the removal of the SIAs. The chapter also reveals the importance of recognising that the transitional legislation as well as the transitional provisions of the FW regime enabled
management to realise this desired outcome. The transitional period not only enabled organisations to avoid being regulated by the agreement making provisions of the FW regime for an extended period by allowing organisations to renew SIAs and put in place ECAs, it also provided avenues for management to mitigate industrial risk in agreement making under the FW regime. The combination of the transitional period and the transitional provisions provided management with additional strategic choices regarding the replacement of these pre-FW agreements which enabled management to achieve better outcomes.

It was found, however, that there was a degree of patchiness in the level of success that management across the industry had in retaining the preferred ER/HR arrangements. The findings revealed that the mining companies were more successful than the contractors in retaining the preferred workplace relations. The desire of management across the industry to minimise their exposure to the threat of protected industrial action explained why the impact of the FW regime was greater on the industrial agreement-making of the contractors. Not only were contractors required by their clients to have in-term agreements, the project nature of their work also meant that contractors found themselves more frequently in a position of having to negotiate greenfield agreements, where more difficulties were experienced than in relation to the EAs. Nonetheless in relation to those employees previously covered by SIAs the organisations predominantly managed to retain the preferred ER/HR arrangements.

When the content of the EAs for employees previously covered by SIAs was analysed it was found that the organisations were largely able to retain the flexibilities required for their operations. It was, however, also established that some of the changes that were emerging under the FW regulatory regime are somewhat at the expense of managements’ prerogative as well as organisational flexibilities. Minor changes in the content of the organisations’ agreements were found that possibly affected remuneration and temporal flexibility. At the same time recognising that management enjoyed an almost unfettered prerogative under SIAs and ECAs. Although the direct implications of these changes in the content of the industrial agreements on the operations of the organisations at the workplace level could not be assessed in detail, managements’ responses would suggest thus far the impact of the concluded EAs on
operations has been minimal and has not affected their workplace relations or organisational cultures in any fundamental way.

The new regime has further affected the labour-management social contract in the SIA-using sections of the WA mining industry. In particular in relation to the industrial agreement making process, when compared to the SIAs and ECAs, the FW regime threatens managements’ preferred ER/HR arrangements of direct individual agreement making with employees. Firstly, in the agreement making process organisations now have to engage with their employees collectively rather than individually. Thus the previous option of ‘forcing’ individual agreements upon employees ended.

Secondly, the other significant difference is the increased engagement with unions. The FW regime curbed management’s ability to ‘escape’ unions in industrial agreement making. Although the findings indicated that the capacity of unions to affect the outcomes of the agreement making process appeared limited, the increased involvement of the unions in the EA negotiations is still considered counter to the industry’s managers preferred model of workplace relations – at the same time this thus far eventuated without the sky falling in.

Besides the negotiation strategies, management were in part able to realise the continuation of their preferred workplace relations through the strategic choices that were made in relation to negotiation structures and processes. In terms of negotiation structures it was, for example, found that the decentralization of negotiations was a choice that was made by several organisations. It held a number of advantages that could be exploited by management. Decentralized negotiations minimised the risk of industrial action, decreased the likelihood of union involvement, and was suggested to result in fewer bargaining representatives overall. While some organisations opted for decentralized EAs, others however went for more centralised agreements.

Furthermore, with respect to the negotiation processes it was found that managers made strategic choices relating to the timing and procedures of the negotiations. The transitional provisions, for instance, permitted the strategic choice of the early replacement of ECAs by EA, which had the added benefit of avoiding the application of good faith bargaining requirements. Similarly some managers suggested that at times
they attempted to influence the employee representational rights processes to restrict the number of bargaining representatives. Management did thus what it regarded as necessary in their industrial agreement making to retain the essence of their preferred ER regimes.
Chapter 8 – Discussion

The aim of this chapter is to discuss the main findings of this research, reflect on the used theoretical framework, outline the limitations of this research, and set out directions for future research and public policy.

The research explored the strategic choices of management in the Western Australian (WA) mining industry in response to the legislative changes that altered the Australian employment relations (ER) regulatory system and removed a widely used and preferred industrial instrument of the industry, the statutory individual agreements (SIAs) – see Figure 8.1 for an overview of the relevant regulatory regimes. Although SIAs were only used by a minority of employers across Australia, they were extensively relied on by organisations in the WA mining industry. This industry was also one of the strongest advocates of these individual contracts and vocally opposed their removal, as the agreements were regarded as an instrumental tool for continuation of their preferred workplace relations models. These preferred workplace relations arrangements were reflected by: internal rather than external forms of regulation, high levels of managerial prerogative and control, and direct relations with the employees. Therefore the research question that has been investigated was:

“What strategic choices did management of organisations operating in the WA mining industry that used SIAs make in response to the removal of these agreements from the federal employment relations regulatory system, why were these particular choices made, and how have these choices as well as the regulatory changes in relation to the removal of the SIAs affected their organisations?”

Figure 8.1 Overview of successive federal ER regulatory regimes in relation to SIAs
8.1 Reflection on the main findings

The findings of this research revealed that in relation to removal of the SIAs and the introduction of the *Fair Work (FW)* regime which prioritised collective over individual bargaining that:

- Management by and large preserved their preferred workplace relations models. The strategic choices that they made in relation to their industrial agreement making were critical in terms of realising the continuation of their existing ER/HR arrangements.
- The transitional period and transitional provisions turned out to be critical in enabling management to realise the desired outcomes. The lengthy transitional period as well as *FW* transitional provisions enabled management to consolidate their existing workplace relations.
- One of the key changes since the removal of the SIAs has been that the labour-management social contract was altered.
  - There has been an increased role for unions in industrial agreement making, although the capacity of unions to influence outcomes was limited, in part because of managements’ choices.
  - The social contract also shifted from the individual to the collective level.
- Interviewees suggested that operations and organisational cultures were unaffected by the regulatory changes, which was also reflected in the content of the industrial instruments that replaced SIAs.
- The contractors faced more difficulties in retaining the preferred arrangements than the mining companies. This arose from a combination of factors including client expectations, the short-term nature of the work and industrial agreement, as well as other changes to the ER regulatory system.
- Managements’ choices were strongly motivated by what previously was achieved through the SIAs and the nature of ER prior to these agreements. Hence contextual and historical factors of the industry should be taken into consideration to fully appreciate the choices that were made.

The remainder of this section will discuss what is of interest about the main findings. It will demonstrate the importance of managerial choices in terms of realising the
outcomes, and further reveals the relative success that organisations across the industry enjoyed in preserving their preferred arrangements.

8.1.1 Managements' preservation of their preferred workplace relations
Management in the WA mining industry have managed to preserve their preferred workplace relations despite the legislative changes removing a preferred industrial instrument of the industry. To understand how this came about the strategic choices that management made in relation to industrial agreement making are considered.

Synthesising the findings across the three results chapters (Chapters 5, 6, and 7), it can be found that the desire of management to preserve their preferred workplace relations was reflected in the strategic choices that were made in relation to their industrial agreement making across the three time periods that were assessed. Firstly, when the ER regulatory system was still underpinned by the *Work Choices* legislation it became evident that the SIAs were going to be removed when the Rudd Labor Government was elected. Nonetheless in this period management already had an opportunity to make strategic choices that embedded their existing workplace relations. Secondly, in the transitional period, despite SIAs further being circumscribed by replacing the AWAs with the ITEAs, management also used the opportunities available to them to prolong their preferred ER/HR arrangements. Lastly, under the *FW* regime, although SIAs were at this stage no longer available, the findings reveal that managements’ choices did impact on the outcomes that were realised.

When it became apparent that the SIAs would be removed, management across the WA mining industry made similar choices in relation to the types of industrial instruments that they used to cover their employees who were on these agreements. The most common trajectories are portrayed in Figure 8.2. Under the *Work Choices* regime the bulk of organisations (23 of the 24) continued to utilise the available AWAs, whereas only one organisation at that stage had moved away from them. In the transitional period companies maintained their AWAs, concluded the temporary ITEAs (at least 13 organisations), and heavily relied on ECAs (21 of the 24 researched organisations). Two main approaches in relation to the ECAs were found. Organisations used the ECAs alongside their SIAs, predominantly as a safety net mechanism. Others opted to entirely replace their SIAs by ECAs. Under the *FW* regime
it was found that a number of organisations (eight of the 24) continued to have employees on SIAs, but that in relation to the previous SIA workforces that the majority of organisations by the time of the research were relying on non-expired ECAs as well as EAs (17 of the 24) concluded under the new regime.

**Figure 8.2 Pathways of successive industrial instruments**

Organisations in the mining industry thus pre-empted the Labor government’s attempts to curtail the use of SIAs by en masse renewing AWAs in the period leading up to their removal (Fair Work Act Review 2012). As AWAs could have nominal expiry dates of up to five years, organisations managed to secure in terms SIAs in some instances till March 2013. Management were able to use the lead time between proposed legislation and when it was enacted to strategically put their organisations in a stronger position for when they wanted to conclude new agreements under the transitional as well as FW legislation.

In the transitional period management opted for what they perceived to be the next best alternative to operating on SIAs. A key finding of the research is that the majority of SIA-using organisations en masse implemented non-union collective agreements (ECAs). By opting to rely on the ECAs the organisations found themselves in a position where they effectively locked-in the existing terms and conditions and emulated what they were already doing under their SIAs, albeit having to shift from the individual to the collective level. ECAs were thus a mechanism for organisations to ensure that the status quo was carried on into the FW regime. In the transitional period management were again thus able to pre-empt the intentions of the regulators by using to their advantage the lead time between proposed and enacted legislation. The heavy reliance on ECAs had the added consequence that for up to five years under the FW regime it was business as usual for the majority organisations.
Also under the *FW* regime the overarching management strategy in the WA mining industry was to retain as much as possible of the preferred ER/HR arrangements that were initially established through these individual contracts. An important finding of this research was that the transitional provisions (*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*) of the *FW* regime provided management with additional choices in relation to the previously SIA covered employees, especially where they had put in place ECAs in the transitional period.

The transitional provision allowed for the direct replacement of old pre-*FW* instruments, such as ECAs, by EAs without having to go through the process of terminating the former. This in turn enabled management to circumvent the application of the good faith bargaining provisions as long as they concluded their EAs three months before the nominal expiry of the ECAs. Several interviewees indicated that their organisations sought to replace their ECAs well before their nominal expiry date, which they indicated resulted in better outcomes. It also reduced the risk of exposure to protected industrial action.

To ensure that the existing workplace relations models were preserved under the *FW* regime management also made strategic choices that affected the actual agreement making. Choices were made that influenced the actual process as well as negotiation structures as these affected the outcomes their organisations were able to realise.

The negotiations structures of the EA negotiations, particularly the level of centralisation and the number of parties involved in the negotiations (Walton, Cutcher-Gershenfeld & McKersie 1994, p. 46), could be shaped by managements’ strategic choices. With respect to the level of centralisation of agreements in the organisations – which affected the number of EAs organisations were using – it was found that those organisations that opted for more decentralised agreements, for example for particular projects or groups of employees, were more likely to experience direct negotiations with the employees. Under the more centralised – companywide – agreements union involvement was greater.

Management of a number of organisations in the mining industry further indicated that they purposely went for decentralised negotiations because it also reduced the organisations’ future exposure to possible companywide protected industrial action.
The employee representational rights under the _FW_ regime enable multiple employee representatives to be involved in negotiations. Therefore another advantage of more decentralised agreements was that in the managers’ experiences it resulted in a smaller number of bargaining representatives. Moreover, it was indicated that managements’ ability to influence the employee representational rights process was greater under the more decentralised EA negotiations.

It was further found that one of the critical factors in relation to the negotiations process was how labour’s side of the bargaining table managed its internal relations, as it provided avenues for management to strategically ‘exploit’ frictions on labour’s side. Inter-union tension provided management with avenues to pursue strategic choices which suited the organisations’ interests and enabled them to achieve better outcomes, whilst also divergent interests between unions and employees in certain instances were used strategically by management.

What this research revealed was that inter-union tensions in the WA mining industry continue to provide management with avenues to strategically play unions off against each other. Management preferred to work with those unions that are less militant, and which pose less of a threat to the organisations’ preferred workplace relations models. Even though the new regulatory regime has provided greater scope for unions to be involved in negotiations, these ongoing inter-union tensions provide a strategic point of weakness on labour’s side which some organisations were happy to use to their advantage and have done so successfully, according to their managers.

The union-employee relations were also critical in shaping the EA negotiations. Where there is a discrepancy in the expectations of the negotiation outcomes between what the union bargaining representatives want to achieve and what the employees’ expectations are, then under the _FW_ regime this can be used strategically by managers. Exactly the same can be argued about any employee representatives versus their constituencies. Interviewees, however, only brought it up in relation to union representatives.

The Act permits managers to directly put an agreement up for a vote to the workforce, even where no agreement with the representatives has been reached. Therefore there is the capacity for management to leverage better outcomes for their organisations by
utilising the frictions that exist between employees and their representatives. In the WA mining industry managers were able to get agreements voted up which the unions as well as other employee representatives opposed. Hence there is still a limited capacity for management to unilaterally draft agreements and put these forward to the employees.

The findings of the research thus demonstrate management were able to achieve their goals through the strategic choices that were made in relation to their industrial agreement making. The strategic choices were part of broader overarching management strategies about the characteristics of their ER/HR arrangements, which were directly linked to organisational cultures, strategies, and operations.

What was evident from the findings was that management in the WA mining industry were leading and taking the initiative on shaping the nature of the labour-management relations. Management needed to act purposely to retain what it wanted, was willing to do so, and managed to a great extent to preserve what it regarded essential in their industrial instruments to retain the essence of their preferred ER regimes.

8.1.2 The importance of the transitional period

One of the key findings of this research was the fact that because the Labor government allowed for a generous transitional period in phasing out the SIAs that this turned out to be crucial in terms of enabling management in the mining industry to preserve their preferred workplace relations. The transitional period in particular turned out to be critical in allowing management to make strategic choices that abated the impact of the FW legislation and mitigated the associated removal of the statutory individual bargaining stream.

The transitional period offered management an opportunity to preserve their preferred ER/HR arrangements for up to five years initially by putting in place industrial agreements in this period that carried on their existing workplace relations arrangements. The period further allowed for the continued exclusion of unions, from industrial agreement as well as from workplaces. Management especially feared that under the FW regime that they had to negotiate with unions over industrial agreements, which was deemed undesirable. By renewing and replacing agreements
under the transitional legislation this could at least initially be delayed. The transitional period further provided organisations with greater industrial certainty. The industrial certainty related to reducing the exposure of organisations to the threat of protected industrial action, whilst it was also about knowing which terms and conditions of employment would be in place. As the FW regime hadn’t been enacted managers weren’t certain that they could achieve the same outcomes under the then to be enacted legislation.

In this brief window before SIAs were removed and the FW regime came into operation, management of the majority of researched organisations opted for what they perceived to be the next best alternative to SIAs namely the ECAs. Managers, industry experts, and even the unions confirmed that the implementation of the ECAs enabled the continuation of the existing workplace relations. The findings suggested that the ECAs were the result of unilateral agreement making by management rather than collective bargaining with the employees – or more specifically in certain instances the drafting up of agreement by management and industry experts such as labour lawyers and ER/HR consultants.

It was management and their advisors’ assessment that in terms of the industrial instruments available in this period that the option of five year non-union ECAs was more attractive than the use of ITEAs. ITEAs were unattractive for two reasons. Firstly, because of their short expiry dates it meant that organisations would immediately be exposed when the FW legislation became operational. Secondly, ITEAs could not be made for future employees and therefore they could not ensure that the existing workplace relations regimes were continued or that there was industrial security in relation to new employees under the FW regime. The ECAs, however, did offer those benefits to organisations.

8.1.3 Changes in the labour-management social contract
Management perceived its preferred workplace relations model in part threatened under the FW Act because it was no longer possible for management to exclude unions from the industrial agreement making process. Another contribution of this research is that is has shown how the labour-management social contract across the mining industry was affected by the regulatory change. In particular the increased number of
unions as signatories to industrial instruments is significant. Of the 17 organisations that concluded enterprise agreements (EAs) for their previous SIA workforces, 16 had at least one union signatory to EAs for these employees. This marked a shift away from the ‘ideal type’ of direct (individual) employer-employee relations. Nonetheless the findings of this research suggest that the capacity of the unions to influence outcomes of the EA negotiations in relation to these employees appeared limited.

Figure 8.3 reveals how the social contract in the mining industry has changed over time. Before the introduction of the SIAs the relations between management and employees typically were based on compliance cultures, whilst at the same time different management-union relations existed throughout the industry (Period 1). Gold mining organisations, for example, had already moved into effectively union free environments before they went down the path of SIAs. The majority of organisations in the industry, such as a number of the iron ore miners, had, however, a form of union engagement. No evidence was found to suggest that management-union relations could be characterised as cooperative. Containment and arm’s-length accommodation on the other hand both portrayed these relations.

**Figure 8.3 Forms of the labour-management social contract**

<table>
<thead>
<tr>
<th>Union relations</th>
<th>Avoidance</th>
<th>Containment</th>
<th>Arm’s-Length Accommodation</th>
<th>Cooperation</th>
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<tbody>
<tr>
<td>Relationship with employees</td>
<td></td>
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<tr>
<td>Compliance</td>
<td>Period 1 pre-SIAs (union free sites)</td>
<td>Period 1 pre-SIAs</td>
<td>Period 1 pre-SIAs</td>
<td></td>
</tr>
<tr>
<td>Commitment</td>
<td>Period 2 and 3 SIAs and ECAs</td>
<td>Period 4 EAs</td>
<td></td>
<td>Period 4 EAs</td>
</tr>
</tbody>
</table>

Adapted from Walton, Cutcher-Gershenfeld and McKersie (1994, p. 11)

The changes in the management-employee social contract that were introduced through the use of SIAs typically involved an attempt to move to ‘high trust’ ‘high
commitment’ workplaces that fostered direct relations with employees. Managers suggested that as organisations “freed” themselves of the clutches of the award that they sought to establish relationships that were based on commitment. SIAs were part of a symbolism whereby employees ‘placed their trust in management’ (Ludeke 1996; Lynch 2011; Hearn Mackinnon 2007; 2009) by moving away from the externally dictated awards to the internally regulated company policies and procedures that were at managements’ discretion. Relations that previously were based on compliance were thus allegedly moved into the realm of commitment, and contractual relations were individualised.

The SIAs under both state and federal regulatory regimes also offered management the capacity to escape the union relationship that had been embedded historically in Australia’s ER regulatory systems. Irrespective of their starting point, all organisations in the WA mining industry through their use of SIAs, from a social contract perspective, ended up in the sphere of union avoidance (Period 2) in relation to SIA covered employees.

Through the use of the ECAs the union avoidance continued in the transitional period (Period 3). In this period the management-employee social contract did shift from the individual to the collective level which is of significance because of the different characteristics of individual and collective agreement making (Flanders 1975). The voting up of the collective agreement was described by interviewees as a more delicate process than the implementation of SIAs, which could more or less be imposed on employees. Thus the shift from the individual to the collective level, whilst hardly altering the terms and conditions of employment or the characterisation of the social contract, did affect the power relations between the parties.

With the FW regime the legal mechanisms to escape union involvement in agreement making ceased to exist. In Period 4 it is shown in Figure 8.3 that under the FW regime the social contracts across the industry moved out of the sphere of avoidance to a form of union engagement. The majority of organisations found themselves in a position where they had union signatories to their agreements. Some of the managers described their experiences of union involvement in the negotiations as reasonably positive, and others explained their role thus far had been largely limited. It was,
however, apparent that in none of the situations the management-union relations could be described as cooperation, which is defined as “building a partnership” by Walton, Cutcher-Gershenfeld and McKersie (1994, p. 11). Although three of the organisations that concluded EAs didn’t have any unions involved in the conclusion of their EAs, the \( FW \) regime has diminished their capacity to exclude them in future negotiations.

The responses from management and union interviewees did not suggest that management-employee relations had been affected by the new regulatory regime, although further research on the employees’ perception of the relationship would be helpful, as is argued in more detail below.

The research has found that through the changes in the legal constraints under the \( FW \) regime that organisations in the WA mining industry had no alternative but to accept the greater role for unions in the EA negotiations. This was in shrill contrast to the SIAs. The regulation literature recognises the limitations that regulators face in their attempts to directly legislate for desired change (Lessig 1998; Scott 2001). Nonetheless in relation to the social contract it was evident that in relation to the involvement of unions in industrial agreement making processes that legislators can play a key, direct, facilitating role through the regulatory regimes that they enact – as they had likewise played in relation to the exclusion of unions through the SIAs.

Despite that it was found that unions were increasingly signatories to the EAs, it is also recognised that their ability to influence the outcomes of the agreement making process in relation to the previous SIA workforces was still relatively limited. The strategic choices that management made reduced their ability to influence the process, and it would appear that thus far the unions also weren’t able to muster support for themselves from the employees. The findings indicated that in relation to the previous SIA employees in the WA mining industry only where the unions were the sole bargaining representative that employers could deal with, i.e. the greenfield agreements, that they were able to exercise significant influence in shaping the outcomes of EA negotiations.

It is further most likely that the relevance of unions for the employees across the WA mining industry was compromised by the sustained mining boom that the industry
experienced. Throughout the era of SIAs, the transitional period, and initially under the FW regime – albeit briefly interrupted by the GFC – the labour market shortages throughout the industry entailed that employees’ contractual power and ‘exit’ opportunities from the industry were greater, thereby eroding the relevance of notions of collectivism. Further research on employees’ perspectives would, however, be warranted to confirm this.

The findings reflect the dominant position that management take-up in shaping the labour-management relations across the industry. Compared to the other actors management had a greater capacity to influence the objective of the social contract. For example, in terms of the future of management-employee relations in the WA mining industry management suggested that their organisations are determined to maintain collaborative relations with their employees and keep the relationship in the sphere of ‘commitment’. If management is able to realise this, then the question arises as to what do the unions have to offer to the employees? Particularly since, as it stands, it is most realistic that genuinely ‘cooperative’ relations between unions and management are not likely to evolve in the near future – as is reflected in the described management attitudes towards unions as well as their continued explicit preference for direct employer-employee relations. Taking also into consideration the changed demographics of the workforce, the evolution of work practices in the industry including FIFO, and changed societal and industry norms towards unionism it is questionable as to whether the unions can win over the ‘hearts and minds’ of the employees.

8.1.4 The implications of the removal of SIAS on operations

The WA mining industry had been one of the most vocal opponents of the removal of the SIAs as it in indicated that the removal of the agreements could possibly jeopardise their operations. This research, however, found that operations and workplace relations models were largely unaffected by the regulatory changes.

The majority of managers indicated that the industrial instruments that they had concluded to replace the SIAs hadn’t impacted on the day-to-day workplace practices or the ways in which daily operations could be managed. This finding was unsurprising given that the ECAs that were concluded in the transitional period were argued to be
collective copies of the SIAs anyways, while desired organisational flexibilities were overall readily available under the analysed EAs.

The general consensus from the interviews was that at this point in time the impact of the removal of the SIAs on workplace efficiency and productivity had been minimal because of the strategic choices that had been made in the lead-up to, as well as under, the FW regime. These had enabled organisations to continue their operations as before. Their choices also postponed the full implications of the FW regime, which provided them further with additional time to embed their existing workplace cultures.

The conducted content analyses for three sets of industrial agreements provided evidence that organisations in the WA mining industry largely managed to retain their preferred ER/HR arrangements. The model under which internal regulation is preferenced over external regulation is continued. In the analysed EAs those matters that affect the various flexibilities to a large extent continue to be referred to company policies and procedures rather than being prescribed in the industrial instruments, and therefore remain principally at managements’ discretion.

Assessing the content of the successor industrial agreements revealed that only limited changes had materialised since the organisations went down the path of SIAs to introduce workplace reforms. In comparison to the ‘old days’ no demarcations, limitations on working hours, or other restrictive workplace practices could be found in the analysed industrial instruments.

Nonetheless it was found that management perceived the outcomes realised under the FW regime more negatively. A minority of the managers indicated that they were affected somewhat detrimentally by the EAs concluded under this regime. In the process of negotiating their agreements they had made some concessions in relation to temporal and spatial flexibility which required them to provide employees with more timely notice for unilateral changes to rosters and/or hours of work. Managers viewed any concessions made in the EA negotiations as a slow erosion of the industry’s preferred workplace relations regulation model, whilst especially in relation to the greenfield sphere major concerns were voiced – which on the basis of the content of these agreements in comparison to the preferred model would be comprehensible from a managerial perspective.
8.1.5 Differences in outcomes between mining companies and contractors

A further contribution of this research was that it highlighted the importance of recognising supply chain pressures throughout industries, also in relation to ER practices. The findings revealed that the miners were more successful in retaining their existing arrangements than the contracting organisations, who in certain instances found themselves struggling under the FW regime. Their differences can largely be attributed to the respective roles that they have in the industry and the way in which the organisations use their industrial agreements. In particular the more fixed term nature of contractors’ agreements, their extensive reliance on multiple project specific agreements, as well as client pressures put them in a more difficult position when they were concluding new agreements under the FW regime.

Assessing the initial rationale for SIAs already revealed that there were noteworthy differences in the motivations of management from the miners and the contractors. The mining companies’ rationale was largely driven by the characteristics of mining operations and the past labour-management relations in the industry. The contractors’ reliance on SIAs was on the other hand strongly influenced by client expectations and preferences. Managers from the contractors emphasized the need to have workplace relations that are in sync with client needs and preferences. It meant that they had to ensure that they didn’t pose a threat in relation to protected industrial action. This also frequently implied that there was a need to exclude the unions from the industrial agreement making process as well as ensure their access to workplaces was restricted.

The dependency relationship between contractors and the larger mining organisations thus shaped ER relations throughout the industry. The findings about the contractors’ motivations also provide avenues for future research for the ER scholarship. Better understanding and theorizing how focal companies are able to influence ER throughout their supply chain is currently under investigated – especially in relation to the Australian mining industry. This research has provided a first glance at some of the dependencies. Further research using network centred approaches (Coe, Dicken & Hess 2008; Lakhani, Kuruvilla & Avgar 2013), for example, might provide opportunities for a deeper understanding of the linkages that exist and how these influence management strategic choices in focal and supplier organisations.
8.1.6 Importance of context and history for industry analysis

The findings of this research also highlighted the need for ER research to situate contemporary issues in their historical and broader economic context (Kochan 1998). Without taking into account the context and history of the WA mining industry, managements’ rationale for the SIAs and their responses to their removal would lack some of the richness that qualitative research can provide.

The characteristics of the mining industry in relation to operational, technological, geographical and market considerations, as set out in Chapter 3, already revealed that management of mining organisations desire high levels of control and prerogative over their employees. At the same time, a historical reflection of the industry’s labour-management relations reveals that managerial prerogative and control were heavily contested by employees and their unions. As a result of labour’s success in gaining concessions from management, organisations were faced, before the SIAs, with operational inefficiencies in the form of restrictive workplace practices and demarcations. Managements’ access to various flexibilities was limited through the layering of awards, collective industrial instruments, and tribunal decisions. The tensions between labour and management further resulted in high levels of industrial action, which caused substantial disruptions to operations. The disruptions jeopardised organisations’ ability to provide continuity of supply which in turn agitated overseas clients who as a consequence threatened to source more from other countries instead.

From the 1980s onwards increased global competition and changing market conditions forced management across the industry to respond to these challenges, which included the re-evaluation of their ER practices. Management particularly wanted to claw back some of the concessions that labour had won. The use of SIAs should thus be viewed within the narrative of broader economic changes that management across the industry faced, and SIAs were only one part of the story of a shift from managerial reactivity to pro-activeness in relation to ER. It then becomes apparent, especially in iron ore mining, that the utilisation of SIAs by organisations wasn’t an opportunistic act of exploiting the regulatory regime when the SIAs initially became available under the state and federal ER systems, but has rather been an episode in an ongoing struggle between labour and management.
Through the use of SIAs management in the industry tried to break-through the cycle of adversarial relations – in a number of instances – and move away from organisational cultures of ‘us’ and ‘them’ relations between management and the award covered workforce and move to an ‘all staff’ culture instead. The agreements were thus a management tool through which workplace relations reforms could be unilaterally implemented, and also fulfilled a symbolic function of signalling the era of new relations between management, employees, and unions. The workplace relations that were established were the result of careful strategic management planning in a number of the organisations (Cooper et al. 2009; Ellem 2004; Fetter 2002; Lynch 2011; Ludeke 1996; Hearn Mackinnon 2007; Swain 1995).

The harmonisation of management-employee relations could be argued to fit within the mould of unitarist management approaches, which would be appropriate. At the same time it has to be recognised that some of the adverse historical relations posed a serious threat to the long-term viability of the industry. This was recognised even by people within the union movement, as well as politicians from both sides of the political spectrum (Kaempf 1989; Siddique 2009).

Prior research (Cooper & Ellem 2011; Ellem 2002; 2003a; 2003b; 2004; 2005; 2005; 2006b; 2014; Hearn Mackinnon 2007; 2009; Peetz 2002; 2005; 2006) on the mining industry has tended to place much emphasis on the fact that through the use of SIAs the social contract was altered and that thereby the unions in the industry were sidelined. De-unionisation was portrayed as a prominent rationale for the SIAs and this research also found that the unions were removed from the workplaces throughout the industry. It is argued here, however, that rather than being as clear as ‘anti-union ideology held by management’ that managements’ choices were influenced by business needs and desired workplace reforms that couldn’t be achieved under the collective bargaining regimes. Thus arguing similar to Fetter (2002, p. 35) that de-unionisation was “a necessary (but perhaps not a wholly regrettable)” consequence of the workplace reforms that the organisations in the WA mining industry were seeking.

8.2 Theoretical Discussion of the Findings

The theoretical framework that is used in this thesis was set out in Chapter 2. It informed the focus of this thesis in terms of the centrality of management choice, the
emphasis on industrial agreement making, and highlighted the important role that the legal external environment plays in constraining the choices that actors can pursue. The contribution of each of the various frameworks in relation to the findings is discussed below. The strategic choice framework is discussed first as it functions as the main ‘lens’. This is followed by the strategic negotiations framework which enabled analysing industrial agreement making in more detail. Then the contribution of New Chicago School (NCS) regulation theory and the construct of regulatory space are outlined. This section concludes by discussing the theoretical contribution of this thesis.

8.2.1 Role of strategic choice framework

Managements’ strategic choices in response to the removal of the SIAs were central in this research, and the strategic choice framework (Kochan, Katz & McKersie 1986) allowed for the analysis of these choices. The framework brings to the forefront the ability of actors to make choices in relation to ER matters. The use of the concept of strategic choice is reflective of the non-deterministic perspective of this research about the relationship between organisations and the external environments in which they operate.

In line with the strategic choice framework (Kochan, Katz & McKersie 1986) both external and internal environmental factors influenced managements’ decisions to go down the path of SIAs. The financial, labour and product markets to which the organisations have exposure – as well as other factors like the characteristics of the workforce, technology, and the regulatory environment – influenced the need for particular workplace relations, whereby management desired high levels of prerogative and control. Downturns in the industry as well as the rise of increasing overseas competition in the 1980s and 1990s, for example, required management to reform their operations and make them more productive. Internal factors, especially the historical labour-management relations were, however, an obstacle in realising this. Thus the combination of these internal and external aspects of their environments influenced managements’ decisions to initially go down the path of SIAs, particularly since the agreements enabled management to unilaterally introduce reforms rather than having to negotiate them through collective bargaining.
Despite the fact that the notion of strategic choice positions the research in a non-deterministic paradigm, what is of interest about the findings in this research in relation to the removal of the SIAs is the high level of similarity in choices that management across the WA mining industry made in relation to their industrial agreement making. This brings to the forefront the likeness in managements’ initial rationale for the agreements and also reflects the limited options available to them when the legislation changed.

The strategic choice literature further helps to explain the observed differences in the successes that management of mining and contracting organisations enjoyed in realising their desired outcomes. There are, for example, clear differences that they experience in their internal and external environments. This was already reflected in the initial take-up of the SIAs. Furthermore, although being part of the same supply chain, the miners and contractors are operating in different product markets which is not only reflected by their operations but also in the ways in which they use their industrial instruments.

The three tier institutional framework, which is a component of the strategic choice framework, was also helpful in understanding how the ER choices that actors made in response to the removal of SIAs played out across the interlinked organisational levels. It revealed that the introduction of SIAs initially drastically altered the relations at the mid-tier level by changing the industrial agreement making practices of the organisations. The management decisions to rely on SIAs, however, were further strongly influenced by top-tier, long term, strategy decisions that management had made about ‘how they wanted to operate their businesses’. SIAs were a tool through which the envisioned workplace relations were realised. The agreements further also fulfilled a deliberate function in allowing management to realise changes at the bottom-tier workplace level. Where previously management were hindered by their industrial instruments in implementing operational reforms, the SIAs enabled them to realise these by referring matters to internal regulation and thereby making it at managements’ prerogative and control. This also enabled management to make changes in the ways in which work was being performed across the organisations.
When the SIAs were removed the long term strategy of how management wanted to operate their businesses at the top-tier level hadn’t changed. The findings revealed that they were in fact rather determined to ensure that past gains were preserved, whereby ECAs turned out to be a key temporary answer. Management especially wanted to ensure that the middle-tier, the agreement making provisions of the FW regime, weren’t influencing what is happening at the workplace level.

Managements’ strategic choices in relation to their industrial agreement making under the FW regime demonstrated that despite the imposed changes by the regulator to the industrial agreement making provisions that choices still could be made. The findings uphold the notion that management can act strategically to achieve desired goals. These choices have enabled the organisations to continue their preferred workplace relations, which can be regarded as demonstration of a non-deterministic relationship between actors and their external environment in the WA mining industry.

Although management choices were central in this research and in realising the observed outcomes, it should not be neglected that unions and employees also make strategic choices. Chapter 3 has revealed that when the SIAs were first introduced that unions strongly contested them. The findings of this research further revealed that the agreement making provisions of the FW regime have provided employees with a greater capacity to influence the agreement making and voting process. The Act has increased employees’ capacity to reject proposed agreements and upset managements’ preferred workplace relations – although thus far managements’ use of the transitional mechanism prevented such opportunities from effectively arising. This is again reflective of the dominant position of management in shaping ER in the industry.

The strategic choice framework was useful for analysing management choices in relation to the removal of the SIAs. Nonetheless the framework itself is most suitable for enterprise studies rather than those at the industry aggregate. The inability to conduct in-depth enterprise level case studies meant that the framework could not be utilised to its full capacity. Furthermore, although the framework recognises that
changes in the legal regulatory environment will affect the choices that actors can make it doesn’t reveal how exactly changes therein will impact on actors’ choices.

8.2.2 Role of strategic negotiations framework

The emphasis in this research was on industrial agreement making and the strategic negotiations framework (Walton, Cutcher-Gershenfeld & McKersie 1994) was a useful framework in assessing this. It helped to define the outcomes – the substantive terms and social contract – of agreement making which permitted the comparisons of outcomes in the WA mining industry before and after the legislative changes. It further provided insight into how these outcomes are realised in labour-management negotiations, whereby also the broad negotiation strategies – forcing, fostering, escape – as well as the desirability and feasibility of change enhanced the understanding of why management in the WA mining industry made the choices that they did in response to the removal of the SIAs and what the consequences of these choices were.

From the strategic negotiations framework the recognition that feasibility and desirability are forces that shape actors’ choices was useful in this research to evaluate in particular those made by management. In the context of the removal of the SIAs and the responses of management in the mining industry, it was found that the legal regulatory framework in which actors make their strategic choices was a key enabling factor in terms of affecting the feasibility of choice. Through the introduction of the SIAs, the regulatory environment initially changed the feasibility of successfully being able to implement management’s desired reforms. On the other hand when they were removed there was no desire from management to initiate change. The legislative changes, however, threatened the feasibility of maintaining the status quo and hence required a strategic course of action by management to try and preserve what they had achieved through SIAs.

In terms of the actual agreement making processes the strategic negotiations framework was also valuable to assess what eventuated in the WA mining industry. The negotiation strategies were in particular useful to analyse how desired changes of the labour-management relations were realised. SIAs offered managers an industrial instrument through which they could unilaterally push through desired changes by
using a combination of *forcing*, *fostering*, and *escape* tactics. *Forcing* and *fostering* strategies were used to shift the relationship with the employees from the collective to the individual level. Moreover, those organisations that prior to their SIAs were still involved in collective enterprise bargaining with unions used the agreement to *escape* them as they could have hindered the implementation of some of the reforms that management were seeking.

In contrast to, for example, manufacturing industries in their quest for workplace reform mining organisations were limited in their capacity to *escape* their existing employees and opt for new greenfields sites instead. Where for other organisations it can be a feasible strategy to start from scratch at a new location and *escape* an existing paradigm with an established workforce (Baird 2000), because of the place bound nature of the commodities mining organisations options are more limited. SIAs were therefore regarded as an instrumental management tool necessary for realising the desired workplace reforms as at least the unions, who up until then in a number of organisations severely influenced the workplace relations, could be sidelined and a new labour-management social contract could be imposed upon employees. The agreements were thus a mechanism to breakthrough existing paradigms in the social contract.

In relation to the strategic negotiations framework’s theorisation of the social contract, the influence that a regulator can have upon it was illustrated by the findings of this research. Walton, Cutcher-Gershenfeld and McKersie (1994, p. 43) explained that “where one party seeks to initiate a change in the social contract, it becomes a subject of negotiations”. What hasn’t been as explicitly recognised in the strategic negotiations literature is the influence that governments, as regulators, can have upon the labour-management social contract. This research has shown how regulators can facilitate and directly influence these relations and in particular influence the in- or exclusion of unions, in this instance in relation to the industrial agreement making process.

### 8.2.3 Role of NCS regulation theory

The findings of this research revealed that the *legal* external environment shaped the *feasibility* of the strategic choices that management could pursue. NCS regulation theory (Lessig 1998) helped to create a better understanding of how changes to the
legal regulatory environment – labour legislation principally – affect and constrain the choices that actors can make. The strategic choice framework was developed against a background of a relatively stable regulatory environment whereas the ‘dynamic’ character of the Australian ER regulatory systems requires a deeper understanding of how this part of the external environment functions.

Although law is only one of four different types of constraints – the others being markets, norms and architecture – that affect the choices that management could make, in relation to the industrial agreement making it was found to be the dominant one. Where NCS regulation theory emphasizes that laws can regulate directly and indirectly, the changes that the regulator intended with the agreement making provisions of the FW regime were evidently aimed at directly regulating the behaviour of actors in the ER regulatory system rather than indirectly modifying one of the other regulatory constraints. It could be argued that the industry norm of statutory individual agreement making was also being challenged by the introduction of the collectivised agreement making framework, whether this new norm became institutionalised amongst management is, however, more than questionable.

The findings further demonstrate that there are limitations in regulators’ ability to directly legislate for behavioural change of regulatees. For example, the heavy use of ECAs throughout the industry could be argued to be a form of defiance of the legislator’s intent – although it did entail that organisations changed from individual to collective agreements. It is, however, not argued that what occurred was the objective defiance of the actual legal constraints to which the organisations were subjected, as there was no evidence that the organisations in the mining industry breached the legislation. What caused the defiance was the result of the strategic decision making capabilities of management throughout the industry who appeared to display a better understanding of regulatory constraints to which they would become subjected than their regulator. Thus at the stage before the FW regime became an objective constraint upon their choices, management pre-empted this by their rational decision making to use alternatives.

Although the market constraints in the industry for the period of this research were constantly changing, it was found that they were less influential on managements’
choices in relation to the industrial agreement making than the *legal* constraints. In the transitional period as well as under the *FW* regime there were substantial changes in relation to financial, product, and labour markets (Battellino 2010; Connolly & Orsmond 2011; Department of Mines and Petroleum 2013; Dickie & Dwyer 2011; IBISWorld 2014; Jefferson & Preston 2010; PWC 2014). The *legal* constraints, however, had a much stronger influence on shaping managements’ ER strategic choices. The findings show that the driver for managements’ choices was namely a particular model of workplace relations that suited the organisations irrespective of economic circumstances and which management wanted to retain because of the flexibilities it provided them.

From the perspective of *architectural* constraints, technological developments have been gradually changing the ER choices management can make, for example, in relation to automation which is ‘redesigning’ work (Bellamy & Pravica 2011; Ellem 2014). The changing technological factors that shape the architectural constraints not only affects operations but can also influence the industrial agreement making in the mining industry – as has been documented by Ellem (2014). In this research it was similarly found that technological factors do come into play in relation to industrial agreement making. It was, however, found to be of relatively limited influence, as it was only an issue for one of the organisations.

NCS regulation theory for this research thus offers insight into how regulatory changes not only directly impact on the *legal* constraints that actors face when making choices, but that they can also impact and shape the other parts of the external environments and thereby constrain choices indirectly. The theory also brings to the forefront the notion that a change in law is not going to result in straightforward change at the enterprise level and that actors can actively seek to defy the constraints to which their strategic choices are subjected. In relation to the removal of the SIAs, however, it was found that legal changes principally directly impacted managements’ choices rather than indirectly affecting the other constraints.

**8.2.4 Role of the regulatory space construct**

Where the strategic choice framework more or less assumes that actors take the *legal* regulatory constraints to which they are subjected for granted when making choices,
reality reveals that actors directly, and indirectly through non-state stakeholders such as employer associations, will not only attempt to defy the constraints to which they are subjected but also attempt to alter them. Hancher and Moran’s (1989) construct of regulatory space therefore brought to the forefront the power relations between regulators and regulatees. The continued employer lobbying in relation to the removal of SIAs, for example, illustrates that attempts to influence the regulatory constraints to which actors will be subjected also happens before they engage in the process of industrial agreement making, thereby attempting to ensure more favourable outcomes can be realised.

The regulatory space construct was particularly relevant to this research as it brings to the forefront the pre-existing relationship of power (Scott 2001, p. 332) between regulator and regulatees. The mining industry takes up a unique position in the Australian economy, as both State and Federal governments have increasingly become reliant upon revenues from the industry (Goodman & Worth 2008).

It has been documented in other policy areas and initiatives such as the resource super profits tax, mineral resources rent tax, and the carbon tax that the industry was able to use its unique position to gain significant concessions from proposed legislation that the industry deemed would ‘hurt’ its prolonged prosperity (Economist 2011; Economist 2012). Furthermore, Scott (2001, p. 330) explains that “[t]he dispersed nature of resources between organisations in the same regulatory space means regulators lack a monopoly both over formal and informal authority.” This would thus also suggest that those regulatees with access to relevant resources, such as the mining industry, should be better equipped to exercise influence in their regulatory space over their regulator.

Thus it is argued that in terms of the regulator-regulatee relationship that in the case of the WA mining industry a form of ‘institutional capture’ is taking place because of its economic importance for the state, and therefore regulatees are able to exercise significant influence over (proposed) legal regulation to which they are subjected (Brueckner et al. 2014; Goodman & Worth 2008).

The transitional period illustrated well the importance of political process of making legislation, which the concept of regulatory space (Hancher & Moran 1989) also brings
to the forefront. One of the aspects that has been underexplored and which provides avenues for further research is how Labor’s initial ‘Forward with Fairness’ policy proposal evolved into the transitional and FW legislation.

The WA mining industry was extremely vocal in its opposition to Labor’s proposal to scrap the SIAs. It has been documented that both Gillard (Norington 2007; Schubert et al. 2007) and Rudd (Grattan 2007; Probyn 2007b) had a number of meetings with the industry to address their concerns. The industry even lobbied to be exempted from the abolition of SIAs (Macdonald 2007b), and it has also been suggested that Labor made a number of compromises (ABC News 2007c; Hall 2008; Hearn Mackinnon 2008) to appease the industry’s concerns.

Although this has been denied by Gillard (ABC News 2007b), it was evident that the transitional legislation that enabled management of the mining organisations to preserve their preferred ER/HR arrangements was substantially different from the initial policy proposal for the transitional legislation. This has been directly attributed to the industry’s lobbying activities (The West Australian 2008). The initial proposal, for example, included a ‘drop-dead’ clause to bring an end to SIAs after the transitional period. These provisions, however, weren’t included in the final legislation “to accommodate the concerns of employers who wished to retain the benefits of these old agreements for as long as possible” (Sutherland 2009, p. 299).

Hence from the perspective of regulatory space it should be further explored to what extent the mining industry was able to influence its regulator and was able to shape the ER regulatory regime in which its organisations are operating. It is not argued here that all the mining organisations and resources contractors enjoy a non-hierarchical relation with their regulator(s) – most have complex and dynamic relations which are more hierarchical than non-hierarchical in nature. Organisations from the mining industry are, however, also able to wield substantial influence in the sphere of policy development through other non-state actors, such as employer associations. Furthermore, in terms of workplace relations policies advocated by the industry, it cannot be ignored that the WA mining industry in comparison to the rest of the Australian economy had a much heavier reliance upon SIAs. Hence it was in the industry’s interest to utilise any capability it had to exercise influence on its
regulator(s) in order to achieve a policy regime that enabled them to preserve what they had been able to achieve through the use of SIAs. The research thus reveals the necessity to understand the interaction between the industrial and political arenas.

8.2.5 Theoretical contribution of this thesis

The theoretical contribution of this thesis has been demonstrating that the strategic choice framework (Kochan, Katz & McKersie 1986), the strategic negotiations framework (Walton, Cutcher-Gershenfeld & McKersie 1994), New Chicago School regulation theory (Lessig 1998), and the construct of regulatory space (Hancher & Moran 1989) can be used complementarily and provide a more refined insight when analysing changes in industrial agreement making, and outcomes, which are driven by legislative changes. Given the complex nature of the research problem, due to the various legislative changes, the situation benefited from having three frameworks and the construct to unpack it. The utilisation of the NCS regulation theory and regulatory construct also reinforces the multi- and inter-disciplinary nature of the ER scholarship.

The advantage of the utilised approach is that whilst granting the centrality to managements’ strategic choices and using the strategic choice framework (Kochan, Katz & McKersie 1986) as the main ‘lens’ it also permitted the research to explore three aspects of the framework in more detail. The process of industrial agreement making and the factors that come into play here were assessed through the strategic negotiations framework (Walton, Cutcher-Gershenfeld & McKersie 1994). The role that legal regulation plays in the external environment and how it constrains choices was reflected in the NCS regulation theory (Lessig 1998), and regulatory space (Hancher & Moran 1989) highlights how legal regulation comes about and to what extent actors can influence the legal regulatory constraints to which they are subjected. What the inclusion of the construct of regulatory space especially brings to the forefront is that one avenue of strategic choice for management is to try and change the legal regulatory constraints to which they are subjected – depicted as public policies in the strategic choice framework.

Figure 8.4 portrays in the strategic choice framework how actors can opt to try and influence the legal external environment which constrains their choices before engaging in realising the performance outcomes, such as industrial agreements.
Actors, for example management but equally unions, can thus strategically try to manipulate the regulatory constraints to which they are subjected. Although the strategic choice framework recognises the influence that choices and their outcomes have on the external environment through existing feedback loops, the explicit recognition that actors deliberately will attempt to alter the legal environment before engaging with other actors offers an additional perspective on the framework.

**Figure 8.4 Regulatory space feedback loop portrayed in strategic choice framework**

![Regulatory space feedback loop](image)

Adapted from Kochan, Katz and McKersie (1986, p. 11)

The research further demonstrated that use of NCS regulation theory and regulatory space offer important perspectives that need to be included in ER analysis. An understanding of the way in which the legislative framework comes into existence and how it constrains actors’ choices enriches the understanding of the choices that actors are making at the enterprise level.

**8.3 Limitations**

The findings that are presented in this thesis have to be interpreted within the limitations of the research design. These limitations arise from the adopted methodological approach of the research, as well as inevitable time and budget constraints. These limitations do not diminish the value of the presented findings, they do, however, require stating.

Firstly, in relation to the adopted methodology of the project – as discussed in Chapter 4 – it is recognised that with respect to both internal and external forms of validity
there are limitations because of the qualitative industry case study nature of the project (Patton 2002, pp. 544-547). Hence attempts to interpret findings as causal relations should be treated carefully, whilst also the capacity to generalize on the basis of the findings beyond the scope of the bounded system of the non-energy, predominantly metallic minerals, SIA-using sections of the WA mining industry would pose issues.

Secondly, also in relation to the methodology of the research, there is inherent researcher bias present in the research because the research was conducted by a single researcher who conducted the interviews, transcribed, and analysed them (Marshall & Rossman 2011, pp. 96-97). This is already partly recognised and accounted for in the constructivist epistemological positioning of the research. Furthermore it is partly overcome by the extensive reliance on triangulation including the use of secondary data sources complementary to the primary ones.

Thirdly, the findings of the research have to be interpreted within the boundaries of the project’s time and budget constraints. One of the main findings was that the transitional legislation and the transitional provisions allowed for the entrenchment of managements’ preferred workplace cultures and that these limited the full impact of the agreement making provisions of the FW regime for the first four years for those organisations that had pre-FW industrial agreements. The FW legislation does create the potential for change, however, as revealed by the number of union signatories to EAs, and therefore the next five years might reveal greater impact of unions capitalising on their signatory status – assuming no legislative change. Due to time and budget constraints it was not feasible to extend the data collection period until organisations would renew their current agreements.

Fourthly, the controversy surrounding the SIAs as well as the continued secrecy provisions that affect the agreements somewhat hindered the data collection of this research. These limitations also illustrate the difficulties of research on the subject of SIAs. The secrecy provisions prevented relevant institutions from disclosing potentially useful documents, which could have further confirmed and illustrated the findings. The full disclosure of different SIAs could still provide useful insight for researchers and policy makers – e.g. the assessment of individual organisations’ use of SIA across the
different safety-net provisions and economic conditions. The controversy on the other hand prevented a number of prospective interviewees from participating in the research. The missing perspectives may have potentially provided additional insights. Although these limitations don’t detract from the general pattern that was found across the industry, further participants could have revealed additional insights on the utilisation of SIAs as well as organisational responses to their removal.

Fifthly, a further limitation of this research is the very limited inclusion of the employees’ perspective in the findings. While the primary focus was on the management choices, it would have been valuable if the employees’ perspectives could have been included in order to establish the outcomes in relation to the management-employee social contract. Attempts were made to gain access to workforces, however due to access issues it wasn’t feasible for this research to approach employees directly.

Sixthly, with respect to the actual process of industrial agreement making it has to be stressed that for this research it wasn’t possible to observe the actual negotiation process. Hence the findings relied on the accounts of the various interviewees, which included the industry experts and also the union interviewees. Direct observations would be desirable and could provide further insight into how the regulation affects and constrains the choices of the various actors during actual negotiations. Since the focus here was rather on the outcomes of negotiations this is not a major shortcoming but does provide avenues for future research.

Despite the limitations of the research, especially those arising from the research design, the value of the adopted industry case study approach should be acknowledged (Bray & Waring 2009). The findings, for example, have demonstrated that empirically there is a strong case for analysing ER in the WA mining industry as a ‘case’ because of the high levels of similarity in management strategies, management strategic choices, and workplace relations approaches found within the ‘bounded system’. Furthermore by adapting a definition of industry which enabled contractors to be taken into consideration the industry case study revealed interesting dynamics between the mining companies and the resources contractors which have been
underexplored previously but provided important insights for academics and policy makers.

Likewise from a public policy making perspective the industry case study has shown some of the difficulties in effective policy making. Regulators want to take into consideration the (genuine) concerns expressed by industries when regulatory changes are proposed. At the same time in the case of the removal of the SIAs it was revealed that by providing (overly) generous transitional periods there can be substantial time lags before policies become operational. With respect to the *FW* legislation, in the context of the Australian political system whereby organisations were able to mitigate the full implications of the legislation over multiple electoral cycles, it raises questions about effective policy making as well as what the objectives of the Labor party were in relation to the removal of SIAs.

### 8.4 Future directions

The findings of this research also generate avenues for future research as well as public policy making. Opportunities for future academic research were identified in relation to aspects of the Australian ER regulatory system. From an Australian policy making perspective the findings highlighted matters in relation to the legislator’s capacity to directly legislate for ER change, the effectiveness of the *FW Act*’s agreement making provisions, and the current alternatives for the SIAs.

#### 8.4.1 Future research

Firstly, the full impact of the *FW* regime is yet to be felt by some of the organisations in the mining industry and therefore further research on the questions of how the *FW Act* is impacting on the industrial agreement making of these previously SIA-using organisations is still relevant. The transitional legislation and the transitional provisions enabled management to entrench their preferred workplace relations and limited the impact of the agreement making provisions of the *FW* regime. Management could make a number of one-off strategic choices that ensured that the preferred ER/HR arrangements in their organisations were preserved under their first EAs. This necessitates the need for continued research as it would appear that the story is not over. The findings also raise questions as to whether the unions in the future, under the current regulatory regime, will be able to influence outcomes to a greater extent
when these one-off choices are not available. Thus will some of the concerns expressed by management in relation to the FW regime eventuate or will management instead be able to perpetuate the existing workplace relations and continue their existing workplace relations practices, policies, and retain the existing workplace cultures.

Secondly, the representational rights process for EA negotiations raises issues for future research. A number of managers stated that in their negotiations they were dealing with union representatives as well as their own employees, both acting as employee representatives. In certain instances a substantial number of these representatives were involved in the negotiations, whereby the extreme that was found in this research involved four unions and 79 employee representatives. How effectively can organisations negotiate with such large numbers of representatives? Further research about frequency and effectiveness of negotiations involving large numbers of representatives would be warranted to assess whether the provision in its current form is supporting the objectives of the Act.

Thirdly, there is also a need for research that includes the perspective of employees on the industrial agreements in the mining industry and ER more generally as their voice is largely missing in current debate and discussions, as was highlighted. Adequate independently gathered information on employees’ attitudes towards their employers as well as the trade unions is particularly lacking. Furthermore, in relation to workplace flexibility also questions can be raised. The flexibilities as defined and analysed in this research were from a management perspective. To what extent employees in the mining industry have access to worker friendly flexible workplace practices was not within the scope of this project, but could provide another opportunity for further research.

Fourthly, the role of unions under the FW regime also raises a number of questions. One of the main findings of this research was the increased union involvement in the negotiations of the EAs. The accounts of management, however, would suggest that thus far – with the exception of the greenfields space – the unions’ capacity to influence the outcomes of the negotiations was limited. Another direction for future research is exploring why the unions in the WA mining industry are not better able to
use the provisions of the *FW* regime to their advantage. It raises questions related to union membership, inter-union rivalries and sectionalism, the preferencing of certain unions by management, as well as about the representational rights provisions. A proposition that, for example, could be investigated is whether instead of facilitating the unions involvement in negotiations if the representational rights are actually counterproductive as they might be leading to a different form of a ‘narcotic institutional dependency’ (Anderson 1981; Gahan 1996), which was alleged to be the case in relation to the old arbitration system. Are the unions who are signatories to the agreements capitalising on the opportunities provided to them by the *FW* regime, and furthermore to what extent are the workers interested in the unions?

**8.4.2 Future public policy**

In relation to public policy, the findings highlight issues as to what extent laws can directly change workplace relations when management doesn’t want them to change. Also the continued discussions of collective versus individual workplace relations are brought to the forefront.

The findings revealed that thus far management were largely able to retain what they had. This despite the *FW* legislation prioritising collective over individual agreement making and enabling greater union involvement in the EA negotiations compared to SIAs. Management continue to enjoy considerable organisational flexibilities, there doesn’t appear to be a return of demarcations, restrictive workplace practices, and industrial disruption which could threaten the viability of the industry. The workplace cultures that the organisations were able to establish through the SIAs appear to be stable and the EAs that were negotiated don’t appear to threaten these. The transitional period effectively allowed management to further entrench their existing workplace cultures. Management had several decades to establish very different workplace cultures and there is little evidence to suggest that across the WA mining industry there is a change away from this.

So far management was quite successful in retaining their preferred ER/HR arrangements in the EA negotiations – except for the greenfields space where possible reforms have already been identified and proposed (Fair Work Act Review 2012; Liberal Party 2013). Whether it is desirable to adjust the current policy regime without
it having been tested to its fullest is a question that will divide. From a compliance costs perspective, for example, a strong argument could be made for ongoing stability of the ER regulatory system. Regulatory changes tend to be at the expense of practitioners who have to bear the brunt of compliance costs with each set of legislative changes (Creighton 2014; Giudice AO 2014). What is evident as well is that the legal regulatory environment dictates only to a certain extent what materialises at the workplace level. Although it influences the choices that organisations are making, at the same time the outcomes that are realised are also heavily shaped by internal organisational factors such as current and past management-employee relations, workplace cultures, and organisational policies and procedures – as demonstrated by this research.

The findings reveal why management across the WA mining organisations would advocate for reinstatement of the SIAs. In contrast to the SIA regimes, their exposure to the prospect of protected industrial action has increased because of the inherent differences in concluding individual and collective agreements. Furthermore, as the organisations enjoyed almost unfettered management flexibility under their SIA regimes any concessions that were made in enterprise bargaining were likely to upset them. It is also counter to the industry’s preferred ER/HR arrangements to engage with unions rather than directly with the workforce hence a regulatory system which enables them to exclude the unions would most likely be their preferred option. The facts on the ground so far would, however, suggest that the removal of SIAs has not resulted in the outcomes that some of the industry doomsayers were predicting.

Till now the current Abbott Coalition Government has indicated that a re-introduction of SIAs is not part of its current policy agenda (Liberal Party 2013; Massola & Skulley 2013). This has, however, not stopped members within the Liberal party (Crowe 2013; Reith 2011; Skulley 2012) as well as industry spokespeople, including those from the mining industry (Ai Group 2012; AMMA 2013; BCA 2012), from continued lobbying for the reinstatement of SIAs, which raises questions about the appropriateness of such legislative change.

It has to be stressed that this research only looked into one industry that used the SIAs, and it wasn’t a lower-paid service sector area where the agreements were often used
to reduce employees’ terms and conditions of employment (Pocock et al. 2008; Van Barneveld 2004; 2006; Van Barneveld & Nassif 2003; Van Barneveld & Waring 2002). In the mining industry the utilisation of the SIAs was, however, also not without controversy.

With respect to discussions about legislative change to reinstate SIAs the findings of this research neither provide conclusive evidence in support, or opposition, for such policy directions. Rather the findings reveal that after the legislative changes that brought about SIAs, and which allowed management to introduce desired workplace reforms in the 1990s and 2000s, that under subsequent legislative changes existing models of workplace relations were deliberately maintained by management.

Besides what was found in the research, what equally can be of use in terms of public policy making is what wasn’t found. With respect to the individual flexibility agreements (IFAs), which were supposed to be an alternative for SIAs (Sutherland 2009), it was evident that organisations in the WA mining industry didn't regard these as a feasible alternative. Although some parties have been advocating for turning IFAs into de-facto SIAs (AMMA 2014; Crickey 2012; Peetz 2014), the findings in this research don’t provide actual support or opposition to this proposition. It is merely recognised that in their current form these instruments do not provide the sort of industrial certainty organisations in the mining industry require for them to be considered to be an acceptable alternative.
Conclusion

This research focused on the strategic choices that management of organisations operating in the Western Australian (WA) mining industry that used statutory individual agreements (SIAs) made in response to the removal of these agreements from the federal employment relations regulatory system. It assessed why these particular choices were made. Furthermore it explored how these choices and the regulatory changes affected the organisations.

Management in the WA mining industry initially used the SIAs to establish their preferred workplace relations, which were reflected by substantial levels of managerial prerogative and control as well as no union involvement in their organisations. Under the SIAs management enjoyed significant levels of flexibility, high levels of industrial certainty, and the agreements also enabled them to quickly respond to operational requirements. The SIAs were further an important element that facilitated the development of the workplace cultures that management established throughout the industry.

The introduction of the Fair Work (FW) regime removed the SIAs and introduced a changed industrial agreement making process that prioritised collective bargaining. Management across the industry deemed this undesirable and counter to their organisations’ interests. Management rather wanted to retain their existing workplace relations, therefore the observed strategic choices were aimed at maintaining the status-quo, or as much of it as possible, for as long as they could. The research revealed the critical role that the transitional period (The Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 (Cth)) and the transitional provisions (Fair Work (Transitional Provision and Consequential Amendments) Act 2009) played in terms of offering managers additional strategic choices that allowed them to mitigate the removal of the SIAs, and provided them with additional time to further entrench their existing workplace relations cultures.

In the period leading up to the FW regime organisations therefore widely used the more favourably perceived non-union bargaining stream to conclude non-union employee collectives (ECAs), a choice that was made by a majority of organisations throughout the industry. The ECAs effectively locked-in the existing terms and
conditions and allowed management to emulate what they were already doing under SIAs. It meant that for up to five years under the *FW* regime it was business as usual for the majority of organisations. Management were thus able to pre-empt the intentions of the regulators by using to their advantage the lead time between proposed and enacted legislation. Since the removal of the SIAs there has thus been a shift from individual to collective agreement making.

At the time of this research the majority of organisations had started concluding enterprise agreements (EAs) for their previously SIA covered employees under the *FW* regime. Where EAs could be analysed it was found that management was relatively successful in retaining their preferred arrangements. Management by and large continued to have access to the desired organisational flexibilities, which the SIAs and the successor ECAs had previously provided for. Although in a few instances minor concessions had been made.

One of the major changes in terms of industrial agreement making in the WA mining industry in relation to those employees who were previously covered by SIAs was the increase of unions as signatories to their EAs. Under the *FW* regime it is no longer possible to exclude the unions from the industrial agreement making process, which was the case with SIAs and ECAs. Even though unions participated in the EA negotiations, overall their influence on the realised outcomes was relatively limited in the majority of instances.

It was further found that contractor organisations had more difficulties in retaining their preferred workplace relations than the mining companies. This was due to a combination of pressures from clients, the short-term project nature of the contractors’ work, and the more limited lifespan of their industrial agreements. Therefore contractors couldn’t make the same strategic choices as the mining companies. The latter had been able to successfully use the transitional mechanism to lock-in existing workplace relations. Also the contractors’ more extensive reliance on greenfield agreements placed them in a different position compared to the mining companies.
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Appendices

Appendix 4.1 – Copy of Human Research Ethics Approval

THE UNIVERSITY OF WESTERN AUSTRALIA
Achieving International Excellence

Our Ref: RA/4/1/5418

30 May 2012

Professor Patricia Todd
UWA Business School
MBDP: M261

Dear Professor Todd

HUMAN RESEARCH ETHICS APPROVAL - THE UNIVERSITY OF WESTERN AUSTRALIA
The Consequences of the Removal of Statutory Individual Agreements from the Australian Employment Relations System

Student(s): Alex Veen - PhD - 21002247

Ethics approval for the above project has been granted in accordance with the requirements of the National Statement on Ethical Conduct in Human Research (National Statement) and the policies and procedures of The University of Western Australia. Please note that the period of ethics approval for this project is five (5) years from the date of this notification. However, ethics approval is conditional upon the submission of satisfactory progress reports by the designated renewal date. Therefore initial approval has been granted from 30 May 2012 to 01 June 2013.

You are reminded of the following requirements:

1. The application and all supporting documentation form the basis of the ethics approval and you must not depart from the research protocol that has been approved.
2. The Human Research Ethics Office must be approached for approval in advance for any requested amendments to the approved research protocol.
3. The Chief Investigator is required to report immediately to the Human Research Ethics Office any adverse or unexpected event or any other event that may impact on the ethics approval for the project.
4. The Chief Investigator must inform the Human Research Ethics Office as soon as practicable if a research project is discontinued before the expected date of completion, providing reasons.

Any conditions of ethics approval that have been imposed are listed below:

Special Conditions:

None specified

The University of Western Australia is bound by the National Statement to monitor the progress of all approved projects until completion to ensure continued compliance with ethical standards and requirements.

The Human Research Ethics Office will forward a request for a Progress Report approximately 60 days before the due date. A further reminder will be forwarded approximately 30 days before the due date.

If your progress report is not received by the due date for renewal of ethics approval, your ethics approval will expire, requiring that all research activities involving human participants cease immediately.

If you have any queries please do not hesitate to contact the Human Research Ethics Office (HREO) at humanresearch@uwa.edu.au or on (08) 6488 3763.

Please ensure that you quote the file reference – RA/4/1/5418 – and the associated project title in all future correspondence.

Yours sincerely,

[Signature]

Research Ethics and Biosecurity Office
Research Services
Phone: +61 8 6488 1610
Fax: +61 8 6488 8775
mill: humanresearch@uwa.edu.au
MBDP: M459

[Stamp]
### Appendix 4.2 – Overview Interviews

**Overview Interviews First Phase Data Collection**

<table>
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# Overview Interviews Second Phase Data Collection

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* 2nd follow-up interview
Appendix 4.3 – Extra Info LinkedIn Participant Recruitment Strategy

Dear HR/ER practitioner,

Thank you for taking the time to respond to my request. My name is Alex Veen and I am a PhD Candidate at the UWA Business School. My research aims to improve the understanding of what the consequences are of the removal of statutory individual agreements, like the Australian Workplace Agreements (AWAs). Therefore I am looking for interviewees who from their experiences in their professional conduct can explain how the removal of the agreements is affecting the daily operations of organizations, and how it has affected the substantive and procedural aspects of the employment relationship.

I would like to invite you to participate in my research. Please leave your contact information on the next page and I will be in contacted with you shortly. The interviews will be conducted at any location within the Perth Metropolitan area which is at your convenience. The length of the interview is approximately 30-40 minutes. I want to thank you in advance for your participation.

Please note that this research adheres to the highest standards of ethical conduct and has been granted approval by the university’s Human Resources Ethics Committee. All identifiable and attributable information provided is treated as strictly confidential and will not be released in any form that may make the participant identifiable. Participation in this research is on a voluntary basis and you may withdraw at any time throughout the research without reason and without prejudice.

Sincerely,

Alex Veen

----
PhD Candidate in Economics & Commerce
The University of Western Australia

T: +61 8 6488 5677
M: +61 42 368 5875
E: alex.veen@uwa.edu.au
Appendix 4.4 – Other Participant Recruitment Notifications

Source: AMMA news bulletin 30 January 2013

ARE you affected by the removal of individual agreements from the industrial relations regulatory system? The University of Western Australia wants to know how your organisation has been impacted by the Fair Work legislation.

The University of Western Australia Business School seeks organisations that used AWAs and/or ITEAs for operations in Western Australia, to discuss how they are affected by the Fair Work legislation.

The research aims to understand how the removal of the statutory individual bargaining stream is affecting organisations' workplace relations.

Participation involves a short interview conducted at any location within the Perth Metropolitan area, at the convenience of the interviewee.

To assist in the research or for further information, please contact Alex Veen at alex.veen@uwa.edu.au or on (08) 5488 5677.

UWA states that this research adheres to the highest standards of ethical conduct and has been granted approval by the university's Human Resources Ethics Committee. All identifiable and attributable information provided is treated as strictly confidential and will not be released in any form that may make the participant identifiable. Participation in this research is on a voluntary basis and you may withdraw at any time throughout the research without reason and without prejudice.

Appendix 4.5 – Template Interview Schedules

Example 1 – Employer Association Representative

<table>
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<th>Introduction &amp; Formalities</th>
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<tr>
<td>Good day Sir/Madam,</td>
</tr>
<tr>
<td>Thank you for participating in this research on the consequences of the removal of statutory individual agreement from the Australian regulatory employment relations system.</td>
</tr>
<tr>
<td>Have you already been provided with a Participant Information Form (PIF) and Participant Consent Form, (PCF)?</td>
</tr>
<tr>
<td><strong>CHECK</strong> -&gt; If not go over the forms and make sure the interviewee receives a PIF and signs the PCF</td>
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<table>
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<th>Confirming the scope of the interview</th>
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<td>As I have sent you by e-mail I would like to interview you about the following matters today:</td>
</tr>
<tr>
<td>- Get your perspective on past and current industrial relations matters related to the existence and removal of statutory individual agreements from the Federal IR system in the iron ore mining industry.</td>
</tr>
<tr>
<td>- Get an impression how the introduction of the Fair Work Act has affected the industry.</td>
</tr>
<tr>
<td>- Gain more detailed knowledge on the employment relations in the iron ore mining industry in Western Australia.</td>
</tr>
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<td>Is that still alright with you?</td>
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<table>
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<th>What happened in the past? Questions about statutory individual agreements</th>
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<tr>
<td>- What are the main factors that have been driving the employers in the iron ore mining industry to choose to utilize statutory individual agreements?</td>
</tr>
<tr>
<td>- What has been achieved by having the agreements?</td>
</tr>
<tr>
<td>- Do you know whether there are still a substantial number of AWAs in place?</td>
</tr>
<tr>
<td>- How important have the statutory individual agreements been for the iron ore mining industry in WA? Why?</td>
</tr>
<tr>
<td>- Are the agreements still important in the industry? Why?</td>
</tr>
<tr>
<td>- Have there been any differences for your members between the various forms of statutory individual agreements that were available under the successive regulatory regimes? (The WPAs in WA legislation, the 1996 AWAs, &amp; the 2005 WC AWAs, ITEAS under transitional legislation 2007)?</td>
</tr>
<tr>
<td>- According to your knowledge have any of the organizations in the industry made use of the Individuals Transitional Agreements? Why?</td>
</tr>
<tr>
<td>- Do you know whether there are still some of these agreements in place?</td>
</tr>
<tr>
<td>- To what extent are/were sub-contractors in the industry able to choose their own industrial instruments or were they required by the companies to use certain agreements?</td>
</tr>
<tr>
<td>- If so what were these requirements?</td>
</tr>
<tr>
<td>- How was this differing between the various main-contractors?</td>
</tr>
<tr>
<td>- Do you have an idea how high was the uptake of statutory individual agreements amongst those organizations who are directly delivering services to the major conglomerates in the industry?</td>
</tr>
<tr>
<td>- Were there differences between various segments? (e.g. labour hire for mining operators, catering &amp; cleaning services, construction, electrical &amp; mechanical work etc.)</td>
</tr>
<tr>
<td>- If so -&gt; do you know why these differences exist?</td>
</tr>
<tr>
<td>- Do you know who were drafting template AWAs for the industry?</td>
</tr>
<tr>
<td>- Did the organizations do it themselves?</td>
</tr>
<tr>
<td>- Were there any outsiders like law firms &amp; consultancies involved?</td>
</tr>
</tbody>
</table>
Was your organisation involved in any way?

What is happening now? Employment relations under the Fair Work Act

- Do you know with what kind of industrial instrument the employers in the industry are replacing the statutory individual agreements?
  - Why are they replacing them with this/these particular instrument(s)?
    - If using collective agreements -->
      - With whom are these agreements negotiated with?
      - Are employees given an opportunity to express their preferred form of representation?
      - Have you encountered any situations in which employees appointed themselves as their bargaining representatives?
  - How is the decision made to choose a particular type of agreement?
    - Who makes this decision?
  - How are the new agreements affecting the work practices in the industry? Can you elaborate on this?
  - Do the new agreements affect the labour costs in the industry? If so -- How?
- In terms of the bargaining outcomes, according to your knowledge what have been the major differences between the outcomes realised with the statutory individual agreements and the agreements made under the Fair Work Act?
  - What are the differences this/these instrument(s) provide in terms of regulating the workplace relations with regard to
    - Substantive outcomes like
      - wage rates
      - loadings (annual leave, casual work, overtime, shift work)
      - penalty rates (shift work, weekend work, overtime)
      - allowances (travel, etc)
      - leave entitlements (shift work, sick leave, etc)
      - performance based pay (bonuses, skill based pay, profit sharing, etc)
      - piece rates
      - superannuation
    - procedural outcomes like
      - classification of employee occupations (job def, type of empl)
      - hours of work (ordinary work days per week (mo-fr), length week (30h), ordinary time hours of work (8-5) overtime, time in lieu, public holidays, flexible start & finish times, averaging out clauses)
      - employee development programs (training, career path, personal review)
      - grievance procedures
      - long service leave
      - occupational health & safety
      - performance management review
      - stand down provisions
      - team work provisions
  - Are you able to comment on these matters in more specifics for the various companies in the industry?
- What is the primary determinant for the salaries and conditions of the workforce in the iron ore mining industry nowadays?
  - Are there substantial differences in the kind of agreements that are being used nowadays between companies (or workplaces) and if so what are the reasons for this?
What roles do the awards play in the industry?
  - Has this changed?
  - And to what extent is this related to the removal of AWAs?

According to your knowledge are the employers in the iron ore mining industry actively using the Individual Flexibility Agreements (IFAs)?
  - Yes -->
    - What are their experiences with these clauses in the EBAs?
    - What are the main issues your members encounter when they attempt to conclude IFAs?
    - What kinds of flexibilities are the companies are looking for?
    - Which flexibilities have been included in the IFAs?
    - What aspects would they like to see included? Can you elaborate on that?
  - No --> Why not? What are the difficulties they are encountering?

Role of unions in the industry
  - Have unions been able to negotiate EBAs in your industry under the FWA?
  - Are your members prepared to negotiate with unions?
    - Who are prepared to negotiate with the unions?
    - With whom? Which unions have been at the bargaining table?
    - Who are not? Why not?
  - Have unions been trying to recruit new members under the FWA in your industry?
  - Has the FWA made any difference in unions’ ability to get entry into workplaces?
    - How has that affected your members?

Industry characteristics
  - How would you characterize the employer-employee relationship in the industry in comparison to the period before statutory individual agreements were introduced?
    - How have the successive changes in industrial legislation affected the employment relations in the industry (WPAs, WRA 1996, WC 2005, transitional, FWA 2009)?
    - How have the sometime adversarial union-management relationships affected the employees?
    - What role have the statutory individual agreements played in shaping these relations?
  - According to you what are the most critical differences between the major players in the iron ore mining industry in terms of employment relations?
    - What are the similarities between the organizations in terms of ER?
    - What do you think shapes these differences & similarities?
    - To what extent do you think it can be related to the business strategies of the organizations?
  - Are agreements in the industry usually applicable to occupational groups within the organizations, work sites, projects, or is there any other form of demarcation?
    - Are there substantial differences between organizations, workplaces and if so what are these differences?
  - Are there any trends in terms of employment relations that you are witnessing in the industry?
    - What role does sub-contracting play in the industry?
    - What is the average length of an employment contract in the industry? Has this changed?
    - What have been the trends in employment figures in the industry?
      - Are there any substantial differences between these figures for the main-contractors and sub-contractors, i.e. have there been any shifts in who actually employees workers in the industry?
    - To what degree enabled AWAs organization to use FIFO in the industry?
Has the removal of statutory individual agreements had an impact on the ability of employers to implement FIFO arrangements?

**To conclude**

- How is your involvement in the iron ore mining industry differing from other employer associations active in the industry?
  - What are the relationships with these organizations?
  - What are the differences in terms of policy positions?
  - And in relation to statutory individual agreements?
- Are most firms in the iron ore mining industry affiliated with your organization?

**Ending**

Thank you so much for your time and answers, it is much appreciated.

- Would you like to receive the transcript of the interview?
  - What is the best way to send it to you?
- Which of your members would you recommended talking to in respect to the topic of the research?
  - Would you be willing to refer me to some of your members?
  - What is the best way to get in touch with them?
- Are there any other organizations you would recommend to talk to about the removal of the statutory individual agreements?
- Do you have any questions?
**Example 2 – Trade Unions**

### Introduction & Formalities

Good day Sir/Madam,

Thank you for participating in this research on the consequences of the removal of statutory individual agreement from the Australian regulatory employment relations system.

Have you already been provided with a Participant Information Form (PIF) and Participant Consent Form, (PCF)?

**CHECK ->** If not go over the forms and make sure the interviewee receives a PIF and signs the PCF

### Confirming the scope of the interview

As I have sent you by e-mail/confirmed over the phone I would like to interview you about the following matters today:

- The role of statutory individual agreements in the iron ore mining industry;
- To get a better idea who were using them;
- How your organization was affected & responded to the agreements in the industry;
- What the consequences of the removal of the agreements from the regulatory system are and how you organization is responding to this.

Is that still alright with you?

#### Union

- When AWAs were allowed by the legislation could members who signed the agreements continue to be members of your organization?
  - If so --> did many of the workers continued to be a member or did they resign? Why?
  - If not --> how did people respond to this stance?
- Did the existence of the agreements affect your membership numbers much?
  - If so --> how?
- In terms of recruiting new members, have you noticed any differences because of the removal of the statutory individual agreements?
- How has the introduction of the Fair Work regime affect your ability to recruit new members?
  - How has it made things different?
- Who are the other unions representing workers in the industry?
  - How are your relations with other unions who have coverage in the industry?
  - Are there co-operative relationships for the bargaining of new agreements?
  - Have there been any demarcation disputes in relation to the iron mining sector since the FWA?

#### When in place

- What proportion of employers in the industry was using statutory individual agreement like the AWAs?
  - Did employers use them for their whole workplace or did they target certain employees?
- When your members were offered AWAs and the like were you able to negotiate on their behalf?
  - If yes --> how did these negotiations play out?
  - If no --> were you able to assist your members in any other way?
- How did existence of AWAs affect those employees in the workplaces who were not covered by the agreements?
- Over the years when agreements were renegotiated have you been able to act as a bargaining representative or able to assist your members in any other ways?
  - If yes --> Did the negotiation processes change over the years (e.g. differences in the managerial attitudes)?
If no --> Why were you unable to be of any service?
- How did the agreements affect the wages and conditions in the industry when they were introduced?

**Expanding AWAs**
- Do you have an idea when the majority of the agreement has/will expire[d]?
- How is your union responding to AWAs that are expiring?
- Are you actively signing-up workers who were on AWAs?
- What is determining the wages and conditions of employment for workers who’s AWAs have expired? Is it a collective agreement, an award, or common law contract?
- Do you know if there are any substantial differences when comparing the AWAs that were in place and the agreements that are replacing them?
  - Do you have an idea what these differences are?
  - Do you have an idea how has it affected:
    - Substantive outcomes like
      - wage rates
      - loadings (annual leave, casual work, overtime, shift work)
      - penalty rates (shift work, weekend work, overtime)
      - allowances (travel, etc)
      - leave entitlements (annual, bereavement, sick leave, etc)
      - performance based pay (bonuses, skill based pay, profit sharing, etc)
      - piece rates
      - superannuation
    - procedural outcomes like
      - classification of employee occupations (job def, type of empl)
      - hours of work (ordinary work days per week (mo-fr), length week (30h), ordinary time hours of work (8-5) overtime, time in lieu, public holidays, flexible start & finish times, averaging out clauses)
      - employee development programs (training, career path, personal review)
      - grievance procedures
      - long service leave
      - occupational health & safety
      - performance management review
      - stand down provisions
      - team work provisions
  - Are you able to comment on these matters in more specifics for the various companies in the industry?
  - How have you been able to obtain this information given the legal restrictions surrounding the disclosure on the content of AWAs?

**Employers**
- What are the major differences between the various employers when it comes to the usage of statutory individual agreements?
  - Can you elaborate on this?
- Now that the AWAs (and the like) are expiring are you able to represent your members in collective negotiations?
  - If negotiations -->
    - How have these negotiations been?
    - How do you regard the outcomes you have realised?
If not -> Why haven’t you been able to do so?

- Why do you think employers want statutory individual agreements back?
- How do you think the removal of AWAs has affected the flexibility of employers?
  o Can you provide examples of this?
  o To what extent is it related to the removal of the agreements?
  o To what degree is it also attributable to the changing regulatory regime?
- Do you think that the removal of the agreements has had an impact on the productivity of employers?
  o If so --> how did they make a difference to workplace productivity?
  o Have you collected any data to measure productivity? Would you be willing to share these?
  o To what extent do you think this has been caused by the removal of the agreements & to what extent would you argue by the introduction of the FWA?

IFA

- When involved in bargaining what kind of stance has your organization taken on the issue of IFAs?
- What is your perspective on the IFAs?
- Have you been using a template version? Why?

Industry characteristics

- How would you characterize the employer-employee relationship in the industry in comparison to the period before statutory individual agreements were introduced?
  o How have the successive changes in industrial legislation affected these relationships in the industry (WPAs, WRA 1996, WC 2005, transitional, FWA 2009)?
  o How have the sometimes adversarial union-management relationships affected the employees?
  o What role have the statutory individual agreements played in shaping these relations?
- How many members do you have in the iron ore mining industry?
  o What percentage of the workforce is a union member in the industry?
- Can you tell me a bit more about the structure of your organization
  o How is this in relation to the iron ore mining industry
  o Which professions in the industry do you represent?
    ▪ Are there also other unions representing these workers?
    ▪ If so how is the cooperation with these unions?
- What are the major issues in your industry at the moment with regard to employment relations?
  o To what extent are these issues related to the changes in the regulatory system?
  o To what extent are these issues related to the removal of statutory individual agreements?
- What are according to you the most critical differences between the major players in the iron ore mining industry in terms of employment relations?
  o What are the similarities between the organizations in terms of ER?
  o What do you think shapes these differences & similarities?
  o To what extent do you think it can be related to the business strategies of the organizations?
- How has the primary determinant for the salaries and conditions changed for the workforce in the iron ore mining industry throughout the 1990s till today?
  o Are agreements in the industry usually applicable to occupational groups within the
organizations, work sites, projects, or is there any other form of demarcation?

- Are there substantial differences between organizations, workplaces and if so what are these differences?
- What roles do the awards play in the industry?
  - How has this changed?
  - Is this in anyway related to the removal of AWAs?
- Are there any trends in terms of employment relations that you are witnessing in the industry?
  - What role does sub-contracting play in the industry?
  - What is the average length of an employment contract in the industry? Has this changed?
  - What have been the trends in employment figures in the industry?
    - Are there any substantial differences between these figures for the main-contractors and sub-contractors, i.e. have there been any shifts in who actually employees workers in the industry?
  - To what degree enabled AWAs organization to use FIFO in the industry?
    - Has the removal of statutory individual agreements had an impact on the ability of employers to implement FIFO arrangements?

**Ending**

Thanks you so much for your time and answers, it is much appreciated.

- Would you like to receive the transcript of the interview?
  - What is the best way to send it to you?
- Which of your members would you recommend talking to in respect to the topic of the research?
  - Would you be willing to refer me to some of your members?
  - What is the best way to get in touch with them?
- Are there any other organizations you would recommend talking to about the removal of statutory individual agreements?
- Do you have any questions?
Example 3 – ER/HR managers

Introduction & Formalities

CHECK -> make sure the interviewee receives a PIF and signs the PCF

Scope of the interview

- What your organization’s initial motivations were for the introduction of statutory individual agreements;
- How the agreements affected the daily operations of your organization;
- What kind of agreement(s) has/have replaced the AWAs and the like;
- And what your experiences are now that the option of statutory individual agreement making has been removed from the regulatory system.

Introduction of the agreements

- When did your organization start using the statutory individual agreements, like the AWAs & ITEAs?
- What were the main factors that made your organization decide to offer the statutory individual agreements to your employees?
- Were the agreements in your organization used for occupational groups, work sites, projects, or is there any other form of demarcation?
- How high was the take-up amongst your employees?
  - Can you give percentages of how many workers were covered by them?
  - How have the changes in the no-disadvantage tests [incl. fairness test, NES etc] underpinning the AWAs affected your organization over the years?

Removal

- Are there still any AWAs or ITEAs in place?
- With what kind of agreement(s) have you replaced the expired AWAs?
  - Why did you opt for this particular legal form?
  - Did you draft the current agreement yourself or did you receive any advice?
- How do/did you deal with the expiring agreements?
  - Did you terminate agreements after the expiration date?
  - Did you have any employees who terminated their agreements after the expiration date?
- How has the removal of statutory individual agreements like AWAs affected the daily operations of your organization?
- How have your employees responded to the removal of the statutory individual agreements?

New agreement(s)

- How is the new agreement affecting the work practices in your organization? Can you elaborate on this?
  - Are you content with your current agreements? Why [not]?
  - Does the new agreement affect your labour costs? If so --> How?
- Are there any substantial differences in the current agreement in comparison to the AWAs you had before?
  - What are these differences?
  - How has it affected:
    - Substantive outcomes like
      - wage rates
      - loadings (annual leave, casual work, overtime, shift work)
      - penalty rates (shift work, weekend work, overtime)
• allowances (travel, etc)
• leave entitlements (annual, bereavement, sick leave, etc)
• performance based pay (bonuses, skill based pay, profit sharing, etc)
• piece rates
• superannuation

- procedural outcomes like
  • classification of employee occupations (job def, type of empl)
  • hours of work (ordinary work days per week (mo-fr), length week (30h), ordinary time hours of work (8-5) overtime, time in lieu, public holidays, flexible start & finish times, averaging out clauses)
  • employee development programs (training, career path, personal review)
  • grievance procedures
  • long service leave
  • occupational health & safety
  • performance management review
  • stand down provisions
  • team work provisions

- How do you think the removal of AWAs and the like has affected your organization’s flexibility?
  o To what extent is it related to the removal of the agreements?
  o Can you provide examples of this?
  o To what degree is it also attributable to other changes in the regulatory regime?

- Has the removal of the agreements had an impact on the productivity of your organization?
  o If so --> how did they make a difference to workplace productivity?
  o To what extent do you think this has been caused by the removal of the agreements & to what extent would you argue by the introduction of the FWA?

- How have your employees responded to the current agreement?
  o With what percentage was the agreement voted-up by the workforce?

- When you entered into the negotiations of the current agreement what were the priorities for your organization?
  o Have you been able to achieve these objectives?
  o Why hasn’t this been achieved?

Ending
Thank you so much for your time, it is much appreciated.

- Are there any other people within your or other organizations you would recommend talking to about this subject?
- Do you have any questions?
Appendix 4.6 - Tree Maps Nodes Research Project in NVIVO

Tree Map NVIVO Nodes - First phase of the data collection:

Nodes compared by number of items coded
Tree map NVIVO nodes - Second phase of the data collection:

Nodes compared by number of items coded
Appendix 4.7 – Anonymised Example SIAs from the Mining Industry

Below are three example SIAs from the mining industry for illustration purposes. These agreements were derived from the sample agreements that were provided by the Fair Work Commission. The AWAs & ITEA cover three time periods. The first agreement was derived from a set of Work Choices agreements, 2004-01-01 till 2007-04-30. The second was subject to the fairness test that was in place from 2007-05-07 till 2008-03-27. The ITEA was concluded in the 2008-03-28 till 31-08-2008 period. The agreements were chosen of the basis of industry, number of employees in the organisations, and their content. It needs to be emphasized that it cannot be ascertained whether these agreements were from any of the organisations that were researched.
Australian Workplace AWA

This is an Australian Workplace Agreement as provided by Part V ID of the Workplace Relations Act 1996 ("the Act").

1. Title

The Australian Workplace Agreement (AWA) shall be known as the "2004 Australian Workplace Agreement".

2. Parties Bound

This AWA shall be binding on the employer and the employee nominated in Clause 19 - Acknowledgement.

3. Relationship to State and Federal Awards

This AWA will totally regulate the terms and conditions of employment with the employee, which would otherwise be covered by any state or federal award.

4. Period of Operation

This AWA shall take effect as at 2 January 2004, or the day upon which is approved in accordance with 170(2)(a) of the Act (whichever is the later) and expire after a period of three years, whichever is earlier, unless terminated in accordance with the terms of this AWA. This AWA may be varied by mutual agreement between the parties and any variation will be processed in accordance with the appropriate legislation.

5. Anti-Discrimination

The parties to this AWA agree that:

(a) it is their intention to achieve the principal object in paragraph 3(b) of the Workplace Relations Act 1996, which is to respect and value the diversity of the workforce by helping to prevent and eliminate discrimination at their enterprise on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and

(b) any dispute concerning these provisions and their operation will be progressed initially under the dispute resolution procedure in this AWA; and

(c) nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth, State or Territory legislation; and

(d) nothing in these provisions prohibits:

(i) where the AWA is approved before 23 June 2000, the payment of junior rates of pay; or
(ii) any discriminatory conduct (or conduct having a discriminatory effect) that is based on the inherent requirements of a particular position; or

(iii) any discriminatory conduct (or conduct having a discriminatory effect) if:

(A) the employee is a member of a staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed; and

(B) the conduct was in good faith to avoid injury to the religious susceptibilities of that religion or creed.

§ Duties and Responsibilities

The employee will diligently and faithfully perform all the duties and responsibilities of their employment in accordance with the Position Description contained in Appendix 1 and the Letter of Offer in Appendix 2 and such other duties as may be reasonably required by the employer from time to time.

The employee is required:

➤ To devote the whole of their working time and attention and use the best of their endeavors to further the development, reputation and business of the employer.

➤ To obey all lawful directions, orders, instructions and policies (as varied from time to time) of the employer. The employee must also obey all policies and procedures of the employer that are varied from time to time. It is your responsibility to familiarize yourself with all relevant policies and procedures.

➤ To be fit for work at all times. You must be alert and not fatigued. You must not have in your possession or control, and to remain free from the effects of alcohol or any unauthorized drug at all times whilst carrying out your duties.

➤ To maintain all necessary qualifications, certificates, permits, licenses (including permission from ____________________________, to access the workplace) and the like to enable them to fulfill their duties and to acknowledge that failure to comply with any of these requirements will terminate the contract of employment. The employer may require you to provide copies of such documents that are necessary for you to fulfill the conditions of your employment.

➤ Not to be directly or indirectly involved or engaged in any work or provide services to any other company, business or individual, whether paid or otherwise, which may in any way conflict with the interests of the company, unless otherwise agreed in writing by the company.

➤ Not to reveal or use, either for their own benefit or anyone else's, any confidential information which you may acquire during their employment. Confidential information refers to any information (written or oral) not publicly available. This obligation will still apply to you after your employment with the employer has ended.

➤ To use the employer's computer facilities appropriately. You must not use the computing facilities for any improper or unlawful purpose, including the access and/or
transmission of offensive, pornographic or defamatory material. You must not copy
the computer software unless you have specific approval.

7. Disclosure of Information on Engagement

All information provided by you to the Company prior to appointment must be accurate and
complete. Failure to comply with this obligation may result in disciplinary action, including
termination of employment.

8. Medical Screening

The employer or its representatives may require you to have medical tests
from time to time, including random drug and alcohol testing as part of safety policy and you
hereby agree to undertake such test or tests as directed by the employer or
its representatives. Failure to participate in, or the presence of any drug or alcohol may result
in the termination of your employment.

9. Security Requirements

The employee may, through its officers, employees or delegates, inspect, your personal property
on the employer's premises or work site and in any accommodation rooms at any time for
security reasons and you hereby consent to such inspection. You shall not, without prior consent
from the employee's manager or other delegated officer, remove any records, documents,
vehicles, tools, plant equipment or other property from the worksite.

10. Probationary period

The probationary period shall commence on the date of employment and shall end 3 months
from that date. During the probationary period the employer or the employee has the right to
terminate the employment for any reason without explanation and without any repercussion. The purpose
of the probationary period is to enable the employer and the employee to ascertain their
suitability and capability to work together.

II. WAGES

Your position title, duties and salary are contained in Appendix 'A'. Your salary paid in
consideration for all duties performed and recognises all disabilities associated with the nature,
conditions and location under which the work is performed, including the length of shifts and
rotating cycles, payment for working Saturdays, Sundays and Public Holidays where applicable, and
includes any annual leave loading which may have extra hours been applicable.

If you are employed as a casual employee your hourly rate includes a loading paid to
compensate for the uncertain nature of your employment and in lieu of all leave entitlements
including annual, sick, leave, and long service leave.

The salary will be paid not less than fortnightly (unless agreed otherwise) by electronic funds
transfer into your nominated account with a bank or other approved, recognised financial
institutions.

12. HOURS OF WORK AND DUTIES
13. LEAVE

13.1 Annual Leave

Employees (other than casual employees) upon completion of each 12 months service (including the period of the leave) shall be entitled to 100 working hours annual leave which shall accumulate monthly on a pro-rata basis.

Annual leave will be taken subject to the operational requirements of the Company. Payment shall be at the wages applicable immediately prior to the taking of leave.

Payment in lieu of leave on termination will be made at the base wage. Such payment does not include overtime, penalty rates, any allowances or the value of other benefits received under the contract of employment.

13.2 Sick Leave

Employees (other than casual employees) are entitled to 80 hours or 10 days (whichever is the lesser) sick leave per year provided that you notify the company if you are unable to work for three consecutive days without medical certificate supporting your claim.

13.3 Long Service Leave

Long Service Leave will be provided in accordance with the provisions of the relevant State legislation.

14. DISCLOSURE OF INFORMATION ON ENGAGEMENT

All information provided to the Company prior to appointment must be accurate and complete. Failure to comply with this obligation may result in disciplinary action, including termination of employment.

15. DISPUTE RESOLUTION PROCEDURE
15.1 Any question or dispute that arises between the employer and employee about
the meaning or effect of this AWA will in the first instance be dealt with by
discussions between the employer and the relevant management personnel of the
employer in accordance with the employer's policy.

15.2 Where the question or dispute is not resolved by such discussions, either
the employer or the employee, or the employer and the employee jointly, may refer
the question or dispute to arbitration by an arbitrator appointed pursuant to the
AWA.

15.3 Where a question or dispute is referred to arbitration pursuant to this AWA, it will be
referred to an arbitrator jointly agreed upon by the parties to this workplace AWA, or
in the absence of AWA to an arbitrator appointed by the relevant State Manager of
the Australian Mines and Metals Association.

15.4 The employer and the employee undertake to accept any arbitrated decision as final
and binding for the purposes of this AWA.

15.5 Until the matter is determined, work must continue at the direction of the employer.
No party is to be prejudiced as to the final settlement by the continuance of work in
accordance with this procedure.

J6. Termination of Employment

This AWA may be terminated prior to the conclusion described in Clause 4 by either party,
upon the provision of one hours notice (or payment in lieu thereof) or any greater amount
prescribed by the Workplace Relations Act 1996.

The employer may terminate the contract of employment without notice for misconduct,
misconduct or neglect of duty which would justify instant dismissal.

Monies paid to you in advance by the employer may be recovered from any accrued
entitlements owing to you. The employer is authorized to make any deductions for the
purposes of this clause following presentation of a statement of all amount owed to the
employer.

J5. Superannuation

The company will provide such superannuation benefits to or a fund nominated by the
employees as is necessary to meet the obligations of the Superannuation Guarantee
Legislation.

J8. Continuity of Service

The parties recognize the importance of the employer being able to guarantee the supply of
labour necessary for the delivery of services to customers. Therefore the employees
undertake for the terms of this AWA not to engage in any industrial action other than
protected industrial action. For the purpose of this clause "industrial action" includes but is
not limited to the following:

- Any strike, ban, refusal to work as directed, picket, boycott or other act or omission by
  the employee done with the intention of causing the work of the employee or of other
  employees of the employer to cease, interfere with or interrupt the continuous supply and flow of labour, product and services.
APPENDIX 1
(WESTERN AUSTRALIA GENERAL)

POSITION DESCRIPTIONS

Level 1 Electrical
Level 1 Tradesperson classification includes, but is not limited to the following:
Electrician.

Level 2 Instrument/Electrical
Level 2 Tradesperson classification includes, but is not limited to the following:
Instrument / Electrical Technician.

Level 3 Mechanical
Level 3 Tradesperson classification includes, but is not limited to the following:
Mechanical Tradesman.

Level 4 Trades Assistant
Level 4 Trades Assistant classification includes, but is not limited to the following:
Trades Assistant.

WAGE RATES

<table>
<thead>
<tr>
<th>POSITION</th>
<th>HOURLY RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1 ELECTRICAL</td>
<td></td>
</tr>
<tr>
<td>Level 2 INSTRUMENT/ELECTRICAL</td>
<td></td>
</tr>
<tr>
<td>Level 3 MECHANICAL</td>
<td></td>
</tr>
<tr>
<td>Level 4 TRADES ASSISTANCE</td>
<td></td>
</tr>
</tbody>
</table>
## POSITION DESCRIPTIONS

**Level 1 Electrical**
Level 1 Tradesperson classification includes, but is not limited to the following:
- Electrician

**Level 2 Instrument/Electrical**
Level 2 Tradesperson classification includes, but is not limited to the following:
- Instrument/Electrical Technician

**Level 3 Mechanical**
Level 3 Tradesperson classification includes, but is not limited to the following:
- Mechanical Tradesman

**Level 4 Trades Assistant**
Level 4 Trades Assistant classification includes, but is not limited to the following:
- Trades Assistant

## WAGE RATES

<table>
<thead>
<tr>
<th>POSITION</th>
<th>HOURLY RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1 Electrical</td>
<td></td>
</tr>
<tr>
<td>Level 2 INSTRUMENT/ELECTRICAL</td>
<td></td>
</tr>
<tr>
<td>Level 3 Mechanical</td>
<td></td>
</tr>
<tr>
<td>Level 4 TRADES ASSISTANCE</td>
<td>$21.00</td>
</tr>
</tbody>
</table>
APPENDIX 1

POSITION DESCRIPTIONS

**Level 1 Electrical**
Level 1 Tradesperson classification includes, but is not limited to the following:
- Electrician

**Level 2 Instrument/Electrical**
Level 2 Tradesperson classification includes, but is not limited to the following:
- Instrument / Electrical Technician

**Level 3 Mechanical**
Level 3 Tradesperson classification includes, but is not limited to the following:
- Mechanical Tradesman

**Level 4 Trades Assistant**
Level 4 Trades Assistant classification includes, but is not limited to the following:
- Trades Assistant

### WAGE RATES

<table>
<thead>
<tr>
<th>POSITION</th>
<th>HOURLY RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1 ELECTRICAL</td>
<td></td>
</tr>
<tr>
<td>Level 2 INSTRUMENT/ELECTRICAL</td>
<td></td>
</tr>
<tr>
<td>Level 3 MECHANICAL</td>
<td></td>
</tr>
<tr>
<td>Level 4 TRADES ASSISTANCE</td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX 2

2 January 2004

Re: Offer of Casual Employment

Dear [Name],

I am pleased to offer you employment with [Company Name] as a casual Trade Assistant commencing on 2 January 2003.

Your terms and conditions of employment will be provided by a combination of the contents of the enclosed Australian Workplace Agreement 2001, primary policies as varied from time to time and all applicable state and federal laws.

The Australian Workplace Agreement will prescribe your conditions of employment from the date of its approval.

In the case of new employees, we draw your attention to the probationary period contained in Clause 10 of the agreement.

If you wish to accept this offer, please sign below and return to me before your date of commencement. Please do not sign the Australian Workplace Agreement for at least 5 (for new employees)/14 (for existing employees) days after receiving it. Once the minimum period has elapsed please deliver the signed agreement to [Signatures].

Yours sincerely,

[Signature]

Letter of Offer Acceptance

I accept your offer of casual employment as a Trade Assistant on the terms and conditions contained in the Australian Workplace Agreement 2001.

Employee's signature: ___________________________ Date: ________________

Employer's signature: ___________________________ Date: ________________
Example 2 – AWA Fairness Test (AWA0045.pdf)

AUSTRALIAN WORKPLACE AGREEMENT

Industry: Mining
Employer size: greater than 500

AUSTRALIAN WORKPLACE AGREEMENT
FOR THE ALLIANCE

THIS AGREEMENT IS MADE BETWEEN

Name: 

Address: 

Phone Number: 

XXX XXX,

THE PARTIES AGREE AS FOLLOWS:

1.0 DURATION AND SCOPE

This Agreement applies to your work with XXX (the Company) on the XXXX Contract at the XXX XXX XXX and commences on 1 April 2007 or the day after the receipt is issued by the employment advocate which ever date is later and will continue in force until 1 March 2012, unless your employment contract is terminated in accordance with this Agreement, or you are transferred to another XXX work location.

The parties agree that the same terms and conditions that are provided by this Agreement will continue to apply after the expiry of this Agreement until this Agreement is replaced by another workplace agreement or as otherwise agreed between the parties.

2.0 RECORDING OF AGREEMENTS

The company will file this agreement with the employment advocate, for approval within 21 days of being signed by both parties.

3.0 RATES OF PAY, SUPERANNUATION AND RETENTION INCENTIVE PAYMENT

3.1 Position

Employees are initially engaged to work in the classification as nominated by the Company in the letter of engagement on the terms and conditions contained in this Agreement.

Progression through the classification structure indicated in Attachment “A” shall be in accordance with company-determined procedures and requirements.

It is agreed that notwithstanding your classification level all employees will undertake all duties as directed by the Company, which are within the limits of the employee's skills and competence and in accordance with safe working practices.

3.2 Pay Rates and Pay Increase

Attachment A to this Agreement provides a base hourly rate of pay and an aggregate hourly rate of pay which are applicable as provided by the terms of this Agreement.

The aggregate hourly rate takes into account the standard time base hourly rate aggregated to include payment for overtime, shift allowance, weekend and public holidays. The hourly rate of pay will be agreed at the time the employment offer is made and set out in the Letter of Offer.
AUSTRALIAN WORKPLACE AGREEMENT

Employees will be paid at the aggregate hourly rate for each hour worked whilst on the XXX. Employees will be paid on a weekly basis.

Employees may opt to be paid on an annualised salary basis calculated on the aggregated hourly rate for all hours regularly worked based on the roster applicable to their position. Should XXX vary the employee's applicable roster at the date of signing this Agreement, appropriate adjustments will be made to the salary levels so that at all times the number of hours required to be worked, and worked, are paid at the aggregate hourly rate.

The salary will be paid weekly and will be paid to your nominated bank account and is based on 1/52 of the individual employees' annualised salary. Proportionate deductions for any unpaid absence will be made from the weekly wage based on the aggregate hourly rate.

The base rates and aggregate rates of pay as contained in Attachment 'A' to this agreement are applicable on and from 1 April 2007 and will be reviewed by XXX XXX on an annual basis and may be increased at the discretion of XXX XXX following such review.

3.3 Superannuation

XXX will make a superannuation payment for employees to the Superannuation Fund in accordance with the requirements of the Superannuation Guarantee (Administration) Act.

As from 1 October 2004, the notional earnings base for purposes of this Industrial Agreement will be 40 ordinary hours for each week of employment at the aggregated rate of pay specified in Attachment A of this Agreement for the employees relevant classification.

3.4 Retention Incentive Payment

On the anniversary of each year of completed service at XXX, the employee will receive a retention incentive payment as detailed below:

<table>
<thead>
<tr>
<th>Completed Years of Service from Commencement at XXX</th>
<th>Retention Incentive</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Year at XXX</td>
<td>$2,000</td>
</tr>
<tr>
<td>2 Years at XXX</td>
<td>$4,000</td>
</tr>
<tr>
<td>3 Years at XXX</td>
<td>$6,000</td>
</tr>
<tr>
<td>4 Years at XXX</td>
<td>$7,000</td>
</tr>
<tr>
<td>5 Years at XXX</td>
<td>$8,000</td>
</tr>
<tr>
<td>6 Years and every year after at XXX</td>
<td>$9,000</td>
</tr>
</tbody>
</table>

4.0 HOURS OF WORK AND WORK ROSTERS

4.1 Hours

Your ordinary hours will be 38 hours per week averaged over your roster cycle. These ordinary hours are the specified hours under your terms of employment by reference to which annual leave and personal / carer's leave accrue. In addition to these ordinary hours, you may be required to work reasonable additional hours (overtime). Your aggregated hourly rate has been set taking into consideration additional hours, shift, weekend and public holiday work that you may be required to perform. You acknowledge that the ordinary hours per week and the reasonable
AUSTRALIAN WORKPLACE AGREEMENT

additional hours that you are required to work are necessary to meet the operational requirements of the Company and that you have advised of your capacity to work these hours before commencing employment.

4.2 Rosters

You agree to work the roster as determined by the Company to meet the overall operating and staffing requirements for the Company’s mining and maintenance operations. The Company will advise you from time to time of the shift requirements applicable to you. This roster cycle is subject to change from time to time according to the requirements of the mining operations and the Company. You will be consulted prior to any changes being made.

However, the Company may change rosters at its discretion. You will not be paid for any time spent off the site on rostered leave.

As of the date of signing this Agreement, your ordinary hours of work are 7.6 per day. You will also work 4.4 reasonable additional hours per day. However, the Company may require you to work further (or fewer) reasonable additional hours as required day to day.

You will work a recurring roster cycle. Currently, the applicable roster is a maximum of 14 shifts worked within a three-week period with the remaining time off duty. You acknowledge that incoming personnel for a roster change over may be required to work a shift of less than 12 hours in total and be paid according to the hours worked that shift. Full details of the applicable roster change-over system will be advised and discussed with you and other employees.

You may, from time to time, be required to work more than 14 shifts in a three-week period, however, the Company will seek to avoid this occurring where it is practical and commercially reasonable to do so.

4.3 Disruption to Work

When it is not possible to work during periods of inclement weather employees will be paid up to 8 hours per day at the base rate of pay if they are rostered to work on each of the affected day/ days. Provided that employees may be re-deployed to another position on site or to another site to perform alternative duties or scheduled to attend training sessions during any such periods.

4.4 Rest Breaks

Employees shall be entitled to paid rest/meal breaks as scheduled by the Company totaling 40 minutes on each shift.

4.5 Point of Assembly and Transport

The designated point of assembly and departure for employees to site shall be XXX.

(a) Each employee shall be responsible for travelling to the designated point of assembly. If an employee misses his/her rostered transport to the XXX he/she may be responsible for arranging and paying for the replacement journey to the XXX and accommodation costs.

(b) The Company shall provide, at no cost to the employee, rostered transportation between the designated point of assembly and the mine and return.

The Company shall return the employee to his/her point of engagement if his/her services are terminated during a period of probationary employment, if he/she resigns giving the specified notice or by the Company at any other time. Except for locally hired employees, the point of engagement for the purposes of this agreement shall be the XXX.
5.0 SAFETY

5.1 Policies and Procedures

It is a condition of employment that employees comply with the relevant Acts, Regulations and safety rules and procedures prescribed from time to time and that are applicable to the Alliance operations at the XXX XXX.

Where personal protective equipment is required, it will be provided by XXX and must be worn at all times in areas nominated by XXX. This equipment shall be maintained to an acceptable standard and will be replaced as required by XXX on a fair wear and tear basis.

5.2 Fitness for Work

It is a condition of employment that all employees present fit for work as required by the roster to perform normal duties. XXX may require an employee at any time to attend a company nominated doctor for a full medical examination.

5.3 Drugs and Alcohol

The Company may require the employee to undertake such medical tests as deemed appropriate including, without limitation, random drug and alcohol testing.

The employee will submit to random and incident specific alcohol or drug testing. Refusal to submit to such testing will constitute a positive reading and may result in termination.

The employee is not entitled to payment for any time for which he/she is considered adversely affected by intoxicating liquor or deleterious drugs.

During employment with the Company, should there be reasonable and sufficient ground, the employee may be required to undergo such medical tests as may be required for the purpose of determining the ability of the employee to perform the work safely and competently. The Company will pay the cost of such medical tests.

The possession or use of alcohol or any illicit drugs is strictly prohibited whilst at work.

Unless prescribed by a doctor, the use of drugs must be declared to your immediate supervisor.

The XXX site policy and site procedures relating to drugs and alcohol in the workplace form part of the terms of this agreement.

5.4 Licences/Certificates

It is a condition of employment that all Plant and Truck Operators, Fitters and Service Personnel hold a current relevant class Western Australian driver’s license at all times during employment with XXX. Employees may also need to hold or obtain licenses or certificates relevant to the work. The relevant Supervisor will inform you of any such requirements.

5.5 Work Clothes

Work clothes should be well fitting, in good condition and give adequate protection from the sun and elements.

The minimum work clothing standard is long sleeve shirt with collar, long trousers, socks and lace-up safety boots with adequate ankle support.
6.0 WORKPLACE EFFICIENCY

6.1 Continuous Improvement

The parties to this Agreement accept that there is a need to continuously improve the operations at the workplace to achieve maximum efficiency and productivity. It is a condition of this Agreement that the parties work co-operatively and through consultation with each other to introduce changes in the arrangements and systems of work which are necessary or desirable to achieve continuous improvements and efficiencies.

6.2 Performance Management

The Company will implement a system of performance appraisal to provide employees with feedback about their performance at work. Employee participation in the process is a condition of this Agreement.

6.3 Normal Work at all Times

Employees will continue to perform normal duties at all times as directed by the relevant Supervisor or Manager, without bans, limitation or stoppages.

Other than in accordance with the provisions of Clause 4.3 XXX may deduct payment for any time during which an employee cannot be usefully employed arising out of any cessation of operations.

It is agreed that employees will continue to work in accordance with the Contract of Employment while a dispute, issue or grievance is resolved through the dispute settlement procedure contained in this Agreement.

6.4 Training and Assessment

While working for the Company the employee will be required to participate in appropriate training and assessment as determined by the Company.

Employees may also be required to assist in training other employees.

Progression through the employment classification structure will be as determined by the Company based on Company assessment of employee skill, competency levels and operational requirements but at all time subject to availability of and nomination to positions.
7.0 CONTRACT OF SERVICE

7.1 Termination of Employment

Other than in cases of misconduct (in which case employees may be summarily dismissed) and during the probation period, employees or XXX may terminate the contract of employment by providing the following period of notice of the intention to terminate, or by the payment or forfeiture of the pay applicable to the period of the notice as the case may be:

<table>
<thead>
<tr>
<th>Employees period of continuous service with the Company</th>
<th>Period of notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 1 year</td>
<td>at least 1 week</td>
</tr>
<tr>
<td>More than 1 year but not more than 3 years</td>
<td>at least 2 weeks</td>
</tr>
<tr>
<td>More than 3 years but not more than 5 years</td>
<td>at least 3 weeks</td>
</tr>
<tr>
<td>More than 5 years</td>
<td>at least 4 weeks</td>
</tr>
</tbody>
</table>

The period of notice to be given by XXX is increased by one week if an employee is over 45 years old and has completed at least 2 years continuous service with XXX. Provided that these provisions will not apply if an employee is engaged on a casual basis in which case the notice period will be eight hours.

7.2 Probationary Period

For the first 3 months of employment employees will be on probation to enable XXX to assess the level of skills and work performance.

XXX reserves the right to waive the period of probation in circumstances where in the opinion of XXX it is not necessary.

At any time during or at the end of the probationary period either party may terminate employment with 24 hours notice.

8.0 LEAVE

8.1 Annual Leave

8.1.1 Employees will be entitled to 180 hours of annual leave over a period of four weeks after each completed period of 12 months service. Annual leave is to be taken or given within 12 months of it becoming due provided that each employee may accumulate up to 320 hours annual leave. Subject to the relevant provisions of the Workplace Relations Act the company and employees may agree in writing to cash out up to 50% of annual leave accrued on a yearly basis (being an amount of 2 weeks per annum). The employee may take leave at any time provided it is approved by the Company and does not exceed the employee’s pro-rata entitlement, provided however that the employee may opt to take this leave on the following basis:

- After every thirteen weeks of continuous service an employee will be paid for 40 hours of annual leave to be taken in conjunction with the scheduled week off site nearest to the completion of this period.
AUSTRALIAN WORKPLACE AGREEMENT

8.1.2. This leave will be paid for at the aggregate hourly rate of pay and in the pay period relevant to the scheduled week off site.

8.1.3. Any accrued and unpaid annual leave will be paid out on termination at the aggregated hourly rate on the basis of 3.08 hours per completed week of service.

8.1.4. Should the site be closed at the client’s request employees will have the option of taking leave without pay or being paid annual leave entitlements that are accrued for the duration of the closure.

8.2 Sick Leave/Carer’s Leave

8.2.1. The Employee is entitled to sick leave without loss of pay due to personal illness or injury for up to a maximum of 20 ordinary hours per annum. This entitlement will accrue on a weekly basis and accumulates from year to year.

8.2.2. Sick leave will be paid for at the employee’s base hourly rate for a maximum of 8 hours per day.

8.2.3. Unused sick leave accumulated from 1st of January 2006 may be paid out on termination. Unused sick leave prior to 1st of January 2006 will not be paid out on termination of employment.

8.2.4. The employee is required to notify his/her supervisor or other company officer on site as soon as possible of his/her inability to attend work due to personal illness or injury and the expected duration of the absence. Failure to notify without good reason will be the subject of counselling or disciplinary action.

8.2.5. A medical certificate shall be provided to the Company in the following circumstances:

(a) for two or more days duration
(b) after two single sick days in any one year
(c) the day before or after a public holiday, or
(d) when required to do so by the Company.

8.2.6. The Employee may use his/her accrued sick leave to look after a sick relative, spouse or partner, provided he/she gives prior notification to his/her supervisor or manager. The Company may require the employee to produce a medical certificate in relation to the illness of such person.

8.2.7. Backdated medical certificates will not be regarded as sufficient evidence for the purposes of clauses 8.2.4 and 8.2.5 hereof.

8.3 Payout of Unused Sick Leave Entitlements

(a) At the start of each year (commencing 1st of January 2006), supervisors will review the attendance record for their crew.

(b) Unused sick leave will be reviewed and maybe paid every 6 months, with the 1st payment occurring 1st of July 06.

(c) Employees must retain a minimum of 3 sick days in their sick leave account.

(d) Unused sick leave accrued prior to 1st of January 2006 will not be paid out.
8.4 Long Service Leave

8.4.1 Employees are entitled to 13 weeks long service leave after 15 years of continuous service with the Company, pursuant to the Long Service Leave Act 1958 (WA). The 13 weeks leave will consist of an equal period of on duty time and rostered off duty time.

8.4.2 If a contract of employment is terminated after 10 years of service, other than for misconduct, the employee will receive payment equivalent to the pro-rata entitlements.

8.4.3 The Company may agree to buy out the employee’s entitlement to long service leave upon such terms as the employee and the Company may agree in writing, provided always that such action is permitted in law in the State of Western Australia.

8.4.4 Payment for such leave shall be at the base hourly rate.

8.5 Bereavement Leave

The employee is entitled to up to three days paid bereavement leave on each occasion of the death of an immediate family member. Immediate family includes mother, father, brother, sister, wife, husband, stepparents, stepbrother or sister, stepchildren and de facto spouse. Such leave will be paid for at the employee’s base hourly rate for a maximum of 8 hours per day on any day the employee is rostered to work.

8.6 Parental Leave

This leave is available after 12 months continuous service with the Company. The entitlement is currently for up to 52 weeks of unpaid parental leave.

8.7 Jury Service

If the employee is required to attend for jury duty the employee will continue to receive ordinary pay for all the time the employee is required, less any money received from the Court.

8.8 Public Holidays

The employee will be required to work on public holidays in accordance with the roster established at the site. Where the employee is not required to work on a public holiday, which falls on a rostered shift, the employee will be paid for 8 hours at the base hourly rate.

9.0 FAIR TREATMENT

9.1 Dispute Resolution Procedure

In relation to any matter that may be in dispute between you and the Company in connection with your employment by the Company (the matter), you and the Company:

9.1.1 will attempt to resolve the matter at the workplace level by, including but not limited to:
(a) you and the supervisor meeting and conferring on the matter and
(b) if the matter is not resolved at such a meeting, you and the Company arranging further discussions involving more senior levels of management (as appropriate)
AUSTRALIAN WORKPLACE AGREEMENT

9.1.2 acknowledge the right of either you or the Company to appoint another person to help to resolve the matter at the workplace level;

9.1.3 agree that you and the Company may engage in mediation if the matter cannot be resolved at the workplace level. You and the Company may agree on an appropriate independent mediator;

9.1.4 agree that if you and the Company engage in mediation, both you and the Company will participate in that process in good faith;

9.1.5 acknowledge the right of either you or the Company to appoint another person to help you or the Company in relation to the mediation process;

9.1.6 an independent party may be appointed by agreement between the you and the Company to assist in the settlement of disputes between you and the Company about the application or interpretation of this Agreement;

9.1.7 agree that during the time when you and the Company attempt to resolve the matter:

(c) you continue to work in accordance with your contract of employment unless you have a reasonable concern about an imminent risk to your health or safety; and

(d) subject to relevant provisions of applicable state occupational health and safety legislation, even if you have a reasonable concern about an imminent risk to your health and safety, you must not unreasonably fail to comply with a direction by the Company to perform other available work, whether at the same workplace or another workplace, that is safe and appropriate for you to perform; and

(e) you and the Company must cooperate to ensure that the dispute resolution procedures are carried out as quickly as is reasonably possible.

9.1.8 To the extent required, the Company may give directions to you in relation to the dispute settling process including but not limited to the conduct of any process initiated under this clause.

9.1.9 If the matter is not resolved by agreement between you and the company, the nominated XXX Senior Manager may determine the matter:

(a) at any time later than 4 weeks after commencement of the dispute, or

(b) at a time prior to this if the nominated XXX Senior Manager considers this to be desirable in the circumstances.

9.2 It is a condition of this Agreement that all work will continue as required whilst the matter is being resolved.
10.0 ACCEPTANCE:

I have read, understand and accept the employment terms and conditions contained in this Individual Workplace Agreement and in Attachment A to the Agreement.

Witness:

Signed
Name
Address
Date
Date of Birth
Phone Number

FOR XXXXXX

Witness:

Signed
Name
Address
Date
ATTACHMENT "A"
XXX CLASSIFICATION STRUCTURE AND PAY RATES

Note progressions through the grades is subject to a combination of periods of work experience and skill assessment and subject to nomination of available job positions by the Company. Company assessments will take into account both industry and XXX skill and experience requirements.

The periods of service in nominated levels are indicative and are subject to Company assessment of work performance. Therefore, length of service in a nominated level will not result in an automatic pay increase.

Classification and Pay Rates for Blast Crew Personnel:

<table>
<thead>
<tr>
<th>Pay Classification</th>
<th>Experience/Assessment Guidelines for Progression</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1: Labourer on blast crew</td>
<td>3A Blast</td>
</tr>
<tr>
<td>Level 2: Magazine Keeper</td>
<td>3B Blast</td>
</tr>
<tr>
<td>Level 3: Restricted Shotfirer</td>
<td>4A Blast</td>
</tr>
<tr>
<td>Level 4: Appointed Shotfirer</td>
<td>5A Blast</td>
</tr>
<tr>
<td>Level 5: Super Shotfirer stage I</td>
<td>6A Blast</td>
</tr>
<tr>
<td>Level 6: Super Shotfirer stage II</td>
<td>6B Blast</td>
</tr>
</tbody>
</table>

Grade 1: Labourer, Spotters

Pay classification 1A.

Grade 2: Trainee in any of the following areas: Truck Driver, Shotfirer, Service Person, Tyefitter, Storesperson, Blast Crew, Plant Operator.

Level 2.1: Entry Level

Pay classification 2A. After competency skills assessment, the employee may progress to the next level. (Per operations or workshop rate as relevant)

Level 2.2: Competency level achieved at Level 2.1

Pay classification 2B. All employees must complete a competency based assessment before progressing to trained positions. (Per operations or workshop rate as relevant)

Grades 3-4: Trained employees requiring further skill and experience development to meet company requirements.

Following the assessment at Level 2.2, employees may progress through the following structure subject to the availability of positions, and subject to appointment by the Company to the relevant job position:

Grade 3:

Truck Drivers.

Plant Operator (single piece of equipment)

Level 3.1: Competent

3D Operations

After 6-12 months at Level 3.2

Level 3.2: Experienced

3F Operations

After 6-12 months at Level 3.1
PAY CLASIFICATION

<table>
<thead>
<tr>
<th>Experience/Assessment Guidelines for Progression</th>
</tr>
</thead>
<tbody>
<tr>
<td>3A Workshop Entry After 3-12 months at Level 3.1</td>
</tr>
<tr>
<td>3B Workshop After 6-12 months at Level 3.2</td>
</tr>
<tr>
<td>4A Workshop After 6-12 months at Level 3.2</td>
</tr>
<tr>
<td>3F Operations After 6-12 months at Level 3.1</td>
</tr>
<tr>
<td>4A Operations After 6-12 months at Level 3.2</td>
</tr>
</tbody>
</table>

GRADE 4

Advanced All Round Operators and Drillers
Level 4.1 4B Operations After 12 months at Level 3.2
Level 4.2 4C Operations After 18 months at Level 4.1
Note: All round operators within this Grade are able to operate all required auxiliary equipment, competent to work as a shovel or digger operator as required and to train other operators as required.

Shovel Operators
Level 4.1 - Trained 4D Operations Entry
Level 4.2 - Competent 5A Operations After 6 months of meeting production requirements at Level 1
Level 4.3 - Experienced 5B Operations After 6 months of meeting production requirements at Level 2

Tradepersons
Level 4.1 - Trained 4A Workshop Entry
Level 4.2 - Competent 5A Workshop After 6 months at Level 4.1
Level 4.3 - Experienced 5B Workshop After 6 months at Level 4.2
Level 4.3 - Advanced Level 1 6A Workshop After 6 months at Level 4.3
Level 4.3 - Advanced Level 2 6B Workshop As nominated by the Company

GRADE 5

Team Leaders appointed from Grade 4 employees.

Trainees
Level 5 - Experienced 6A Operations On appointment and having completed or studying towards formal training qualifications as nominated by the company.

Level 6, 7, 8
Appointments to pay Level 6, 7 and 8 of the pay classification structure will be made by the company to support the required Super and team leader positions.
**AUSTRALIAN WORKPLACE AGREEMENT**

**ATTACHMENT “A” (Cont.)**

REMUINERATION BASED ON CURRENT ROSTER OF “TWO ON ONE OFF” AS AT 1 APRIL 2007 IN ACCORDANCE WITH THE CLASSIFICATION STRUCTURE IN THIS ATTACHMENT “A”

The rates of pay applicable to employees are as follows and are applicable from 1 April 2007:

<table>
<thead>
<tr>
<th>Pay Classification</th>
<th>Operations</th>
<th>Blast</th>
<th>Workshop</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
<td>B</td>
<td>C</td>
</tr>
<tr>
<td>Level 1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic Hourly Rate</td>
<td>12.77</td>
<td>14.61</td>
<td>16.52</td>
</tr>
<tr>
<td>Aggregated Hourly Rate</td>
<td>19.69</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level 2</td>
<td></td>
<td></td>
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## Contents

1. Period and Operation of Agreement .................................................. 3
2. Position .......................................................................................... 3
3. Duties and Obligations ................................................................... 3
4. Conflict of Interest .......................................................................... 4
5. Place of Employment ....................................................................... 4
6. Engagement .................................................................................... 4
7. Tools and Equipment ....................................................................... 4
8. Unauthorised Use of Equipment ....................................................... 4
9. Hours of Work ................................................................................ 4
10. Remuneration ................................................................................ 5
11. Induction ........................................................................................ 5
12. Termination/Redundancy/Transmission of Business ....................... 5
13. Leave ............................................................................................. 5
14. Public Holidays .............................................................................. 7
15. Superannuation ............................................................................. 7
16. Rules and Regulations ................................................................... 7
17. Occupational Safety and Health .................................................... 7
18. Alcohol and Other Drugs ............................................................... 7
19. Anti-Discrimination ....................................................................... 8
20. Continuity of Supply ..................................................................... 8
21. Issues Resolution Procedure ......................................................... 8
22. Registration of Agreement ............................................................. 9
Employment Agreement

Date: 
(Insert date)

Parties: 

(Insert employee name, address and contact number)

1. Period and Operation of Agreement

1.1 This Agreement shall commence upon lodgement with the Workplace Authority, who will send you a receipt advising you when this has happened.

1.2 The expiry date of this Agreement shall be 31 December 2009. At the nominal expiry date of this Agreement the terms and conditions of this Agreement remain in force until replaced by a new agreement or terminated in accordance with the provisions of the Workplace Relations Act 1996.

1.3 This Agreement stands alone and operates to the exclusion of any Award or other Agreement. Therefore during the operation of this Agreement no other Industrial Awards or Agreements shall apply other than when referred to in this agreement.

1.4 This agreement will apply to you regardless of the number of separate contracts of employment and conditions that may come into existence during the term of this agreement.

2. Position

You will be employed as a ______________________ (Insert position), or in such other capacity as the parties may agree between them from time to time, with effect from the commencement date of this Agreement on the following terms and conditions.

3. Duties and Obligations

3.1 You will undertake duties in accordance with the relevant position description, including all and any tasks which are incidental to those duties and responsibilities. These duties and responsibilities may be amended from time to time by the Company at its discretion. In addition, you will perform such other duties or responsibilities as are within the limits of your skill, competence and training as the Company may direct from time to time.

3.2 While working for the Company you are required to:

a) obey all lawful directions of the Company as advised from time to time;

b) provide a police clearance whenever requested by the Company;

c) conduct yourself in a professional, responsible, ethical and courteous manner at all times and not engage in any conduct that may damage the Company's goodwill, reputation or standing or otherwise bring the Company into disrepute.

3.3 You declare that all information provided to the Company prior to commencing employment is accurate and complete i.e. there were no false or misleading statements or material omissions. If this is found not to be the case, your employment may be terminated subject to investigation into the circumstances at the time.
3.4 You may be required, as a condition of employment, to hold a valid driver’s licence. In this case, if such licence is cancelled or suspended for any reason, your employment with the Company may be terminated.

3.5 If you are unable to attend work for any reason you must give the Client and Company as much notice as possible and at least notify them no later than the time you are required to commence work. When notifying the Client and Company of your inability to attend work, you must explain the reason for and the estimated duration of your absence.

3.6 The Company is entitled to stand you down without pay for any day or part of a day on which you cannot be usefully employed.

4. Conflict of Interest

4.1 You agree that, during the term of your employment, you will not, without the prior written consent of the Company, enter the service of, or be employed in any capacity for any purpose whatsoever, by any person, firm or company.

4.2 You undertake to spend such times as is necessary to attend to the Company’s business and shall use your best endeavours to improve and extend the business of the Company at all times and to faithfully and honestly discharge your duties.

5. Place of Employment

You will be required to work at various work locations throughout Australia as required by Clients of Pty Ltd and payment for hours worked, including transit time if applicable, will be subject to client requirements.

6. Engagement

Pty Ltd has clients that have different intermittent work requirements and/or projects. You will therefore be engaged on an hourly basis as determined by the client needs and operational requirements and will be paid for all hours worked as determined by the client. You will not be paid for hours not worked other than as specified by the client.

7. Tools and Equipment

You will ensure that their tools and equipment are insured for the duration of all work assignments including transit. Pty Ltd will not incur any costs associated with any damage or loss.

8. Unauthorised Use of Equipment

Any individual who uses Pty Ltd or a Clients vehicle of any kind for personal use without prior written consent or permission will be completely liable for any loss or damage that may result. Unauthorised use of equipment may lead to termination of your assignment subject to investigation into the circumstances at the time.

9. Hours of Work

Hours of work will vary according to the operational requirements of Pty Ltd clients. You will be provided with written confirmation of relevant rates and site conditions applicable to each client and job before commencing your assignment.
10. Remuneration

10.1 Pay Rates will be in accordance with your classification as follows:

<table>
<thead>
<tr>
<th>Classification</th>
<th>Nominal Flat Rate Per Hour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auto Electricians</td>
<td>$26.00</td>
</tr>
<tr>
<td>Auto Mechanics</td>
<td>$23.50</td>
</tr>
<tr>
<td>Boilermakers</td>
<td>$24.00</td>
</tr>
<tr>
<td>Bricklayers</td>
<td>$26.00</td>
</tr>
<tr>
<td>Cabinet Makers/Joiners</td>
<td>$24.00</td>
</tr>
<tr>
<td>Carpenters</td>
<td>$26.00</td>
</tr>
<tr>
<td>Coded Welders</td>
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</tr>
<tr>
<td>Crane Drivers</td>
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</tr>
<tr>
<td>Drillers</td>
<td>$22.00</td>
</tr>
<tr>
<td>Drillers U/G and Surface</td>
<td>$23.00 - $25.00</td>
</tr>
<tr>
<td>Electrical Instrumentation</td>
<td>$27.00</td>
</tr>
<tr>
<td>Electrician</td>
<td>$26.50</td>
</tr>
<tr>
<td>Fibreglassers</td>
<td>$24.00</td>
</tr>
<tr>
<td>Forklift Operator</td>
<td>$26.00</td>
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<tr>
<td>Gas Fitters</td>
<td>$24.00</td>
</tr>
<tr>
<td>General Hands</td>
<td>$26.00</td>
</tr>
<tr>
<td>Labourers, under 20 yrs</td>
<td>$15.00 - $17.00</td>
</tr>
<tr>
<td>Labourers, 20 yrs +</td>
<td>$18.00</td>
</tr>
<tr>
<td>Ladgers</td>
<td>$20.00</td>
</tr>
<tr>
<td>Linespersons</td>
<td>$24.00</td>
</tr>
<tr>
<td>Machinists</td>
<td>$26.00</td>
</tr>
<tr>
<td>Mechanical Fitters, Fixed Plant</td>
<td>$26.00</td>
</tr>
<tr>
<td>Mill Operators</td>
<td>$23.00</td>
</tr>
<tr>
<td>Mobile Fitting</td>
<td>$26.00</td>
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<tr>
<td>Painters</td>
<td>$26.00</td>
</tr>
<tr>
<td>Pavers</td>
<td>$22.00</td>
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<tr>
<td>Pipe Fitters</td>
<td>$26.00</td>
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<tr>
<td>Plant Fitters</td>
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<td>Plant Operators Mobile</td>
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<td>Plumbers</td>
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<td>Poly Welders</td>
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<td>Refrigeration Mechanic</td>
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<td>Sandblaster</td>
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<td>Signwriter</td>
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<tr>
<td>Sheetmetal Workers, First Class</td>
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<tr>
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<td>Storeperson</td>
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<td>Tool Makers</td>
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<td>Trades Assistants</td>
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<td>Truck Drivers (all classifications)</td>
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<tr>
<td>Welders, Second Class</td>
<td>$22.00</td>
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</table>
11. Induction

On commencement of employment you will be required to undergo and successfully complete an induction program presented by Ply Ltd and where required by our clients.

12. Termination/Redundancy/Transmission of Business

12.1 Employment may be terminated if you are in negligent or incompetent in the performance of your duties, or you fail to perform the duties assigned to you diligently and in a productive, efficient and effective manner, or are absent from work without authorisation.

12.2 If you are absent from work for four (4) consecutive days without the prior or subsequent approval of the Company, you shall be deemed to have abandoned your employment contract, and the contract of employment shall be deemed to have been terminated by reason of neglect of duty from the start of the unauthorised absence.

12.3 Where you have been terminated in accordance with the provisions of this section, wages shall be paid up to and including the last day of work performed by you.

12.4 As your employment is of a casual intermittent nature you will be given 1 hour's notice of termination. There will be no claim to contractual benefits as the rates include loadings for the intermittent nature of the work assignments.

12.5 Nothing in this section will preclude the Company from terminating you without notice for serious misconduct.

12.6 In the event that you fail to give the Company the required Notice of Termination in writing, the Company is authorised to deduct the equivalent pro rata amount owing at the time of resignation from due entitlements and deduct any monies owing to the Company.

12.7 If the Company terminates employees because of reasons of an economic, technological, structural or similar nature, the Company will not pay any redundancy pay because of the intermittent nature of the work and the flat nominal rates compensate for the nature of the work.

12.8 In the event the business is disposed of to a party or parties not wholly controlled by the Company and you are offered employment by the purchaser, or are transferred with the business, on terms and conditions similar to those which you were employed by the Company, you shall not be entitled to any payment in lieu of notice or any redundancy pay prescribed by any award or agreement.

13. Leave
As the work is on an intermittent casual basis and subject to requirements you are not entitled to any leave payment.

14. Public Holidays

14.1 Subject to clause 14.2 you are not entitled to paid leave on a public holiday.

14.2 If a client requires you to work on a public holiday, you will not unreasonably refuse to work on that public holiday and will be paid your nominal flat hourly rate referred to in 16.1.

15. Superannuation

Payment contributions will be in accordance with the Superannuation Guarantee (Administration) Act 1992. Contributions will be paid on Ordinary Times Earnings, calculated on the nominal rate referred to at Clause 10.1 and shall be paid on 40 hours per week worked.

16. Rules and Regulations

16.1 Pty Ltd is entitled to establish and/or amend such policies, procedures and other written directions, as it may deem appropriate to regulate the conduct of employees or to regulate procedures and benefits applicable to employees.

16.2 You undertake to comply with such policies, procedures and written directions as may be in force from time to time and any policies, procedures and written directions of any client you are assigned to work for. Any breach of Pty Ltd and Client policy, procedures and written directions is viewed seriously by Pty Ltd and may lead to termination of your assignment subject to investigation in to the circumstances at the time.

17. Occupational Safety and Health

17.1 You agree to comply with the Company’s and any client’s safety and health management system and to adopt safe working practices for the protection of you and others.

17.2 You are required to wear and use accident prevention equipment and protective clothing the purpose for which it is supplied at all times whilst on site.

17.3 You will be required to comply with all of the Clients safety requirements and relevant Acts and Regulations governing workplace safety.

17.4 In performing your duties you will be required to work in a manner that will not injure or put you, fellow employees or any other person on site at risk.

17.5 Any breach of any Occupational Safety and Health policy, procedure, rule and regulation of Pty Ltd and its clients is viewed seriously and may lead to termination of employment subject to investigation into the circumstances at the time.

18. Alcohol and Other Drugs

18.1 The Company insists that all employees attend work in a fit state that will enable them to perform their duties without danger to themselves or others.

18.2 The Company is committed to providing a safe work place and has a drug and alcohol programme, which includes random drug and alcohol testing. Your consent to be drug and alcohol tested is a condition of employment.
18.3 The following actions are prohibited at all times:
   a) entering or being on Company premises while adversely affected by alcohol or drugs;
   b) except with the express approval of the Manager or supervisor, bringing or using alcohol or drugs for medical purposes on Company premises;
   c) buying or selling drugs on Company premises;
   d) being in control of a Company vehicle or equipment while adversely affected by alcohol or drugs;
   e) and as otherwise specified in the Company's fitness for duties policy.

18.4 'Company Premises' means all areas or work within the client's premises including mining leases, and camp premises and grounds.

18.5 Overall management of the programme will be in accordance with the Pty Ltd's Fitness for Work Policy, which may be amended from time to time. Complying with the company's Fitness for Work Policy is a condition of employment.

19. Anti-Discrimination

   The parties agree that
   a) it is the intention to achieve the principal object in paragraph 3(j) of the Act, which is to respect, and value the diversity of the workforce by helping to prevent and eliminate discrimination at their enterprises on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and
   b) any dispute concerning these provisions and their operation will be progressed initially and under the Dispute Resolution Procedure set out in section 21; and
   c) nothing in these provisions shall operate to prevent any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth, State or Territory legislation; and
   d) you shall comply with all discrimination and harassment policies specified by the Company from time to time.

20. Continuity of Supply

20.1 The Company may deduct payment for any day you cannot be usefully employed arising out of any cessation of operations or for any reason you are unable to perform your duties.

20.2 You will continue to at all times perform your duties commensurate with your position at all times as directed by the client and/or Pty Ltd without bans, limitations or stoppages. Any action of this kind will be grounds for termination of your employment and you will not be paid while any ban, limitation or stoppage continues.

21. Issues Resolution Procedure

21.1 In order to minimise the effect of disputes that may arise between the parties about this agreement, the parties:
   a) will attempt to resolve the matter at the workplace level, including, but not limited to:
22. Registration of Agreement

22.1 Pty Ltd will lodge this Agreement with the Workplace Authority as an Individual Transitional Employment Agreement in accordance with the Workplace Relations Amendment (Transition to Forward with Funnels) Act 2008.

22.2 You agree to co-operate fully to ensure the quick approval of this Agreement by the Workplace Authority.