Review

Forensic Linguistics in Australia: Origins, Progress and Prospects
Diana Eades, Helen Fraser and Georgina Heydon (2023)
Cambridge University Press. 90 pp.

Reviewed by Alexandra Grey

Written in a straightforward and clear style, this book in Cambridge University Press's Elements series of short, peer-reviewed, digital-only books provides an insightful account of the varied research that comes within a broad understanding of ‘forensic linguistics’. The authors, three highly regarded Australian academics, situate foundational and current forensic linguistics research against the backstories of how such research came to be undertaken and by whom, crucially encompassing engagement and uptake from judges, lawyers and police.

It will assist new as well as seasoned academics, within and beyond Australia, because many bodies of knowledge are covered without assuming the expertise of readers. Moreover, in contextualising forensic linguistic research, its stakeholders and its impacts, this book will help lawyers, legal interpreters, police and others outside academia whose work concerns language in legal settings to better understand the research literature. It could form the basis of a university law course.

The authors’ approach meets and indeed exceeds series editor Tim Grant’s hopes for an Element highlighting ‘similarities and differences between Australian and British Forensic Linguistics … as well as the common endeavour’ (p.
1). Moreover, the authors’ thoughtful narration of the development of forensic linguistics in Australia is motivating and optimistic: research is shown to now be interdisciplinary, understood and applied by (some) judges and lawyers, and responsive to the injustices it helps to elucidate and solve. It is in this last regard that Australian topics are most apparent, as much of the research surveyed concerns Australian Aboriginal people and languages and increasingly involves Aboriginal researchers, interpreters and consultants. The book itself notes how this major theme has had the knock-on effect of Australian forensic linguists also investigating the marginalisation within legal settings of speakers of migrant languages other than English. Yet this research about linguistic minoritisation is likely to resonate overseas, and many readers beyond Australia should find parallels with research concerning Aboriginal people if they too work in colonised countries, coloniser countries or academic and legal contexts around the world in which English is encoded with authority as a colonial legacy.

There are six chapters, a well-stocked list of references, a list of cited cases and an appendix summarising the ‘Engagement of the Judiciary and Legal Profession with Forensic Linguistics’ and the ‘Recognition in Law of Specific Australian Forensic Linguistics Work’. This appendix covers the events and initiatives of specific courts and specific judges, legal proceedings, reports and judicial bench-books.

Chapter 1 introduces the book’s purpose and limits (i.e. only published Australian works) and explains what linguistics, applied linguistics and forensic linguistics are. The explanation of the difference, or overlap, in the terms ‘forensic linguistics’ and ‘legal linguistics’ is lucid and one of the book’s nuggets of obvious relevance to non-Australian readers. Namely, ‘forensic linguistics’ is sometimes used narrowly to describe applied linguistics research relating to the use of language in evidence and as distinct from ‘legal linguistics’, which describes research about language in the many other types of legal process. However, ‘forensic linguistics’ is now also used as a general term to describe both these branches of research. In the authors’ view, legal and forensic linguistics share the key theme of ‘ensur[ing] justice’, be it in promoting equitable justice (which should be an oxymoron, but isn’t) across different language groups or in the more reliable and more just use of language as forensic evidence, which requires overcoming the misconceptions of police, lawyers, judges and juries about language. Subsequent chapters illustrate the way these themes shape research projects as well as the extent of Australian linguists’ outreach.

All three authors have been chief among those reaching out. The book’s most senior author, Professor Diana Eades, is an international figure whose legacy includes the establishment of this journal (see p. 7). Through a book that is by no means self-aggrandising, the authors’ experiences as expert witnesses, consult-
ants, trainers, leaders in professional associations and leaders of a Call to Action, in addition to their academic work, enable them to review Australian forensic linguistics with insight and to add details on collaborators, activities and non-academic outputs unavailable in the academic literature alone.

Chapter 1 begins a practice repeated throughout the book of carefully and generously acknowledging scholars who have contributed to what has come to be forensic linguistics and explaining the fundamental concepts required to understand their work. Likewise, specific milestones and initiatives in the history of engagement with the legal profession are named and narrated. Recent milestones like the introduction of the *Recommended National Standards for Working with Interpreters in Courts and Tribunal* by the Judicial Council for Cultural Diversity, in consultation with Professors Sandra Hale and Diana Eades and other linguists, will likely be familiar to academic readers in Australia, but are augmented by being set within an intellectual history.

Importantly, the book brings earlier and lesser known milestones to light, including the ethnic (rather than geographical) dialectal evidence academic T. G. H. Strehlow gave ‘in an Australian legal matter in 1959, almost a decade before Svartvik coined the term “forensic linguistics”’ (p. 5), and a 1979 government report by Gloria Brennan, the first Aboriginal person to graduate in linguistics in Australia, ‘on the need for interpreting and translation services for Aboriginal people’, noted by the authors as ‘the first linguistic research to deal with language in legal contexts in Australia’ (p. 5).

Chapter 2 is useful for outlining key misconceptions about language held within legal circles, tracing the roots of misconceptions to the expertise many people assume for themselves and others merely because they use a language, something lawyers are especially prone to because they are highly skilled and confident users of language. The chapter builds on this by introducing the concept of language ideologies as ‘taken-for-granted assumptions about how language works that are socially, culturally and historically conditioned … but, like the common knowledge discussed above, they can be at odds with the findings of linguistic research’ (p. 13). Four specific language ideologies that create injustices (or at least barriers) are described:

- ‘the assumption that skill in using a language necessarily implies the language user has explicit and reliable knowledge about the structure and usage of the language’ (Language Expertise Ideology, p. 13);
- ‘the assumption that monolingualism is, and should be, the norm in society’ (Monolingual Language Ideology, p. 14);
- ‘privileg[ing] written language as the basic form of linguistic expression’ and the ““tyranny of the transcript”, quoting Walsh (1995) (Written Language Ideology, p. 15);
Perhaps especially salient to readers of this journal, the chapter in turn addresses linguists’ misconceptions about law:

Linguists are sometimes dismayed that the law does not simply accept their evidence-based opinion, but leaves decisions for the jury, under the guidance of barristers and judges, who may also take evidence from less qualified witnesses. This is because the law does not itself operate on scientific principles – indeed, the questions a trial addresses are often not capable of being resolved by a purely scientific approach. (p. 11)

The three subsequent chapters review specific research works and their key ideas, as well as specific legal cases or other legal applications of the research. The book is pacy, noting the relevance of language ideologies without dwelling on them. These three chapters are divided by type of context: linguistic in chapter 3, interactional in chapter 4 and sociocultural in chapter 5, preceded by a short note on the additional role of context in priming the analysis of forensic linguistic evidence in chapter 1 (p. 9). This is a novel way of organising the vast field(s) of forensic linguistic literature. The distinction between the three contexts may be opaque to those with no linguistic expertise. Yet conceptually mapping this disparate literature is a feat I have attempted myself, on a smaller scale (Grey and Smith-Khan, 2021), and with no greater success. The backstory to the research helps the division into the three different kinds of context make sense for the reader. In any case, the research within each of these three chapters is presented with utmost clarity.

Chapter 3, ‘Linguistic context’, deals first with the expanding use of forensic linguistic evidence in litigation and the processing of claims for asylum, and the corresponding development of scientific methods on which to base such evidence. These methods are yet to be generally valued by courts, the chapter explains, albeit with exceptions. It concludes that ‘verballing’, i.e. the fabrication of confessions within interview records that was supposedly ‘eradicated by the introduction of recorded police interviews’ (p 19), can still occur when police-produced transcripts of indistinct, covert audio-recordings unreliably prime the listening judges, lawyers and juries. However, in this respect (as in others), the story of Australian forensic linguistics is not all gloom. While the practice of transcripts being produced by the police is far from ideal, the researchers, led by second author Helen Fraser, draw on their experience of litigation to pinpoint the key problem with the legal handling of indistinct covert recordings, i.e. the way they are evaluated ‘by lawyers and judges, on the assumption that detecting and
correcting errors requires only common knowledge’ (p. 20). A Call to Action involving cooperation between many institutional actors in Australian forensics linguistics1 led to judicial acknowledgement of the problem and support for the establishment of the Research Hub for Language in Forensic Evidence at the University of Melbourne in 2020.

Chapter 3 goes on to review linguistic research on speaker and author identification, differentiating ‘voiceprint’ evidence, which is discredited yet used in litigation in the US (and perhaps elsewhere), from the reliable use of spectrographs in forensic phonetic evidence (p. 22). It describes linguists’ involvement as expert witnesses on the meaning of words, such as non-standard or non-English words and disputed trademarks, while highlighting their exclusion from giving evidence about word use.

The chapter also deals with the movement for Plain English in law and its transformation into multi-modal and multilingual initiatives to improve access to justice for non-speakers of Standard Australian English. It is particularly insightful in its account of the many recent collaborations between Aboriginal experts, linguists and lawyers to produce not only bilingual online legal dictionaries but also apps, audio-recordings of the police caution in multiple languages, new official protocols for lawyers (summarised on pp. 34–6) and the Blurred Borders Resource Kit, which ‘uses visual art, plain language and storytelling to explain legal concepts and processes’ (p. 36, see https://blurredborders.legalaid.wa.gov.au/about-blurred-borders). Collaboration between Australian linguists and international colleagues produced Guidelines for Communicating Rights to Non-Native Speakers of English in Australia, England and Wales, and the USA (Communication of Rights Group, 2015).

Finally, this same chapter outlines research on laws about language. A little too short and not an easy fit within the chapter, this section reflects the difficulty of reviewing and integrating diverse research. Laws about language are one area where forensic linguistics and legal linguistics diverge not only in content but also in whether researchers are linguists or legal scholars. Nevertheless, as the book acknowledges, there are an increasing number of researchers in Australia who are both legally and linguistically trained. Linguists working on the subfield of language policy may be doing research on laws about language as well, although this section does not include examples.

Chapter 4, on interactional contexts, is shorter and less diverse than the preceding chapter and targets research about various forms of interview/interrogation in legal processes: police interviews; courtroom question and answer exchanges; refugee status assessments; and mediations, youth conferencing and other interactions in ‘alternative legal settings’ (p. 53) usually labelled in legal scholarship as Alternative Dispute Resolution. The authors note that forensic linguistic research
on alternative legal settings remains scarce, and I would suggest emerging research on parliamentary language as another body of work on non-court contexts that may integrate with the research into forensic linguistics in interactional contexts, given its interactional, rule-governed and normatively monolingual nature.

Chapter 5 concerns sociocultural contexts, including legal culture and ‘mainstream Anglo culture’ (p. 54). It opens with the claim that ‘[t]he most striking impact of sociocultural context on language in the law is seen in situations involving the participation of Aboriginal people’ (p. 54) and follows with: ‘While many non-Aboriginal people within the western law are unaware of Aboriginal law, Aboriginal scholars are increasingly drawing attention to the disjunction or conflict of laws’ (p. 54, citing Dodson (1995) and Gaykamangu (2012)). This point is worth amplifying for international readers as it is addressed to Westerners generally rather than Australians specifically. The authors name land claims and native title claims, two kinds of statutory right of action for Indigenous people in Australia, as ‘arguably the most extreme cases of mismatch in cultural presuppositions’ (p. 54). Linguistic evidence may be used in such claims to help prove historical connection to specific areas despite forcible removals of First Nations people from lands.

This chapter focuses on intercultural communication between Aboriginal and non-Aboriginal people in legal proceedings and on research revealing insufficiencies in the translation of legal concepts. Readers may be interested to see the range of matters for which Eades has been requested to provide ‘expert reports relating to conversational style and the relevance of sociocultural context in communication with Aboriginal people’ (p. 57), including ‘Australia’s largest racial discrimination case,’ ‘Australia’s largest human rights case’ on stolen wages and, only last year (2022), ‘the first judicial decision in the civil jurisdiction to accept linguistic evidence about gratuitous concurrence’ (all summarised on p. 58).

In this chapter the authors flag tension over the role of translators that runs through forensic linguistic research and its application beyond Australia, while summarising the research of lawyer and now Linguistics PhD candidate Alex Bowen into the translation and miscommunication of police cautions to suspects about their right to silence. Bowen’s work highlights the need for assumed knowledge to be recognised as culturally specific and not shared, hence needing to be provided before speakers of Aboriginal languages understand the police caution, even in translation. Thus, the standard text for police cautions in Djambarr-puyngu and Kriol in parts of the Northern Territory of Australia now make that implied information explicit, i.e. the translation is ‘indirect’ (p. 56). However, as the authors note, ‘[t]his “explication” approach is not universally accepted within the field of translation studies, as it could be seen to breach the ethical code which states that “translators do not alter, add to, or omit anything from the content and
intent of the source message” (p. 56, citing AUSIT, 2012: 10 and Bowen, 2021: 319).

Moreover, while the research covered in this chapter is about interactions involving Aboriginal people, the authors argue for wider relevance: ‘there is no reason to think that the law’s lack of awareness about sociocultural contexts is relevant only to Aboriginal people, especially given the rich linguistic and cultural diversity in Australia’ (p. 59).

The book ends more optimistically than many academic works. Chapter 6 recaps the pivotal engagement between the judiciary, legal profession and forensic linguists in Australia, noting the key but somewhat less engaged involvement of law enforcement agencies. It also highlights the interdisciplinary nature of much forensic linguistics research, and connections between Australian and overseas scholarship.

Referring to Nguyen v R, a 2020 High Court of Australia appeal case about unfairness ‘in the prosecution of people “with cultural and linguistic disadvantage”’ (p. 62), this chapter notes how the decision cites and follows Eades’s research even though neither she nor other linguists gave evidence in the case, thus marking ‘a new development in the awareness by lawyers and judges of linguistic research’ (p. 62). While heartened by this ‘step forward in our legal system’s understanding and recognition of the consequences of linguistic and cultural diversity’ (p. 62), I feel the take-away point of this final chapter is its proposal that Australia’s forensic linguistics is, primarily, ‘critical forensic linguistics, that is, forensic linguistics that engages with questions of power and inequality’ (p. 64). Framed this way, forensic linguistics is a wide field but a field with a cohesive drive and a future worth pursuing.

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Notes

1. This Call to Action involved the Australian Linguistics Society, Applied Linguistics Association of Australia, Austral(as)ian Speech Science and Technology Association, Australian Institute of Interpreters and Translators, the
Australasian Institute of Judicial Administration, the Council of Chief Justices, and the Judicial Council on Cultural Diversity.

References


