Electronic surveillance and systemic deficiencies in language capability:
Implications for Australia’s national security

A thesis submitted in fulfilment of the requirements for the degree of
Doctor of Philosophy

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December 2014
 Declaration

I certify that except where due acknowledgement has been made, the work is that of the author alone; the work has not been submitted previously, in whole or in part, to qualify for any other academic award; the content of the thesis/project is the result of work which has been carried out since the official commencement date of the approved research program; any editorial work, paid or unpaid, carried out by a third party is acknowledged; and, ethics procedures and guidelines have been followed.

David Wayne Gilbert

1 December 2014
Keywords

National security, electronic surveillance, language, interpreting, translating, transcription, intelligence, policing, criminal justice, discourse analysis, evidence, illicit-drugs, code words.
Abstract

Australian law enforcement agencies increasingly deploy electronic surveillance techniques to combat serious and organised crime to maintain national security. The criminal justice system is an important source of data that can shed light upon non-traditional security challenges. Telephone interception and listening device recordings of suspected criminal activity often comprise conversations conducted in languages other than English containing jargon and/or code words. Community translators and interpreters are relied upon to translate these conversations into English for evidentiary purposes. Military cryptologic linguists also translate languages other than English from electronic surveillance activity to support national security objectives. However, unlike ongoing language capability development in the military in support of meeting traditional security objectives, language capability supporting non-traditional security areas of law enforcement has remained relatively unchanged for three decades.

Using qualitative interviewing methods and discourse analysis of court transcripts, this research investigates the strengths and weaknesses of language capability available to support law enforcement agencies. Systemic deficiencies in language capability and associated causal factors are identified. This thesis argues that language capability supporting the criminal justice sphere is seriously under-resourced and that this has significant implications for Australia’s national security defined to include non-traditional security challenges.
## Contents

<table>
<thead>
<tr>
<th>Keywords</th>
<th>iii</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract</td>
<td>iv</td>
</tr>
<tr>
<td>Abbreviations</td>
<td>x</td>
</tr>
<tr>
<td>Declaration</td>
<td>xi</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>xii</td>
</tr>
<tr>
<td><strong>Chapter 1: Introduction</strong></td>
<td>1</td>
</tr>
<tr>
<td>1.1 Background</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Context</td>
<td>5</td>
</tr>
<tr>
<td>1.3 Purpose</td>
<td>8</td>
</tr>
<tr>
<td>1.4 Significance and scope</td>
<td>10</td>
</tr>
<tr>
<td>1.4.1 Significance</td>
<td>10</td>
</tr>
<tr>
<td>1.4.2 Scope</td>
<td>11</td>
</tr>
<tr>
<td>1.5 Thesis outline</td>
<td>12</td>
</tr>
<tr>
<td><strong>Chapter 2: Literature review</strong></td>
<td>15</td>
</tr>
<tr>
<td>2.1 Introduction</td>
<td>15</td>
</tr>
<tr>
<td>2.2 Convergent threats: Divergent policies</td>
<td>15</td>
</tr>
<tr>
<td>2.2.1 Broadened concepts – narrow constructs</td>
<td>16</td>
</tr>
<tr>
<td>2.2.2 Australian language policies</td>
<td>28</td>
</tr>
<tr>
<td>2.2.3 The national security–criminal–language nexus</td>
<td>32</td>
</tr>
<tr>
<td>2.3 Transnational crime in the Australian context</td>
<td>37</td>
</tr>
<tr>
<td>2.3.1 Countering transnational crime</td>
<td>38</td>
</tr>
<tr>
<td>2.3.2 Making sense of the threat</td>
<td>40</td>
</tr>
<tr>
<td>2.4 Language in context</td>
<td>41</td>
</tr>
<tr>
<td>2.4.1 Analytical approaches and context</td>
<td>41</td>
</tr>
<tr>
<td>2.4.2 Notions of translation equivalence</td>
<td>46</td>
</tr>
<tr>
<td>2.5 Electronic surveillance evidence</td>
<td>54</td>
</tr>
<tr>
<td>2.5.1 Translated transcripts for evidentiary purposes</td>
<td>54</td>
</tr>
<tr>
<td>2.5.2 Forensic translation</td>
<td>57</td>
</tr>
<tr>
<td>2.5.3 Translated transcripts as primary data</td>
<td>61</td>
</tr>
<tr>
<td>2.6 Summary</td>
<td>62</td>
</tr>
<tr>
<td><strong>Chapter 3: Methodology and design</strong></td>
<td>64</td>
</tr>
<tr>
<td>3.1 Introduction</td>
<td>64</td>
</tr>
<tr>
<td>3.2 Methodology</td>
<td>65</td>
</tr>
<tr>
<td>3.2.1 Researching the legal environment</td>
<td>65</td>
</tr>
<tr>
<td>3.2.2 An interdisciplinary approach</td>
<td>68</td>
</tr>
<tr>
<td>3.3 Research design</td>
<td>71</td>
</tr>
<tr>
<td>3.3.1 Data collection</td>
<td>72</td>
</tr>
<tr>
<td>3.3.2 Tier 1 – Court observation</td>
<td>75</td>
</tr>
</tbody>
</table>
Tables

Table 3-1: Key areas of investigation, by sample population 79
Table 3-2: Tier 2 – Group 1 supporting objectives 80
Table 3-3: Tier 2 – Group 2 supporting objectives 81
Table D1: Supporting objectives/data collection cross-referencing* 280
Table E1: Supporting objectives/data collection cross-referencing* 282

Figures

Figure 3-1: Four-tiered research design 74
Figure 3-2: Participant experience in years, by sample population 86
Figure 4-1: Relevance of translation/interpreting skills to transcription tasks LET/CTL 116
Figure 4-2: Access to analysis training LET/CTL 117
Figure 4-3: Perceived advantage of intelligence support LET/CTL 125
Figure 4-4: Assessed level of intelligence support provided LET/CTL 126
Figure 4-5: Perceived level of trust in the workplace LET/CTL 129
Figure 4-6: Degree of environmental influence on the translation process LET/CTL 130
Figure 4-7: Degree of translator satisfaction with final translated product LET/CTL 131
Figure 4-8: Translation objectiveness LET/CTL 131
Figure 4-9: Degree of translator integration into a team environment LET/CTL 132
Figure 4-10: Translation objectiveness Barrister/Court interpreter 132
Figure 4-11: Frequency of errors in translated transcripts, Court interpreter/Barrister 140
Figure 4-12: Likelihood of translation error remaining undetected 141
Figure 4-13: Difficulty interpreting extracts from translated transcripts, Court interpreter/Barrister 143
Figure 4-14: Effect of transcript errors on judicial fairness, Court interpreter/Barrister 144
Figure 4-15: Translated transcript error causal factors, Court interpreter/Barrister 145
Figure 4-16: Trial delays due to disputes over alleged accuracy of translated transcripts, Court interpreter/Barrister 150
Figure 4-17: Frequency of natural sounding English in translated transcripts, Court interpreter/Barrister 154
Figure 4-18: Unique genre of language used in translated transcripts, Court interpreter/Barrister 154
Figure 4-19: Appearance of unique terms/phrases in translated transcripts, Court interpreter/Barrister 155
Figure 4-20: Coded utterances by word, phrase and/or figure – Case study 1 183
Figure 4-21: Grammatical use of the word ‘thingy’ – Case study 1 184
Figure 4-22: Grammatical use of the word ‘thingy’, by percentage – Case study 1 185
Figure 4-23: Grammatical use of the word ‘thingy’ over time – Case study 2 192
Figure 4-24: Grammatical use of the word ‘thingy’, by percentage – Case study 2 192
Figure 4-25: Appearance of the word ‘thingy’ in appeals cases 209
Figure 5-1: Grammatical use of the word ‘thingy’ – Case studies 1 and 2 217
Figure 5-2: Translator qualifications 2011–13 228
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACC</td>
<td>Australian Crime Commission</td>
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<td>AFP</td>
<td>Australian Federal Police</td>
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<tr>
<td>AUSTLII</td>
<td>Australasian Legal Information Institute</td>
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<tr>
<td>CTL</td>
<td>military cryptologic linguist</td>
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<tr>
<td>CTS</td>
<td>cryptologic supervisor of linguists</td>
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<tr>
<td>DFAT</td>
<td>Department of Foreign Affairs and Trade</td>
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<tr>
<td>HMAS</td>
<td>Her Majesty’s Australian Ship</td>
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<tr>
<td>LET</td>
<td>law enforcement interpreter(s)/translator(s)</td>
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<tr>
<td>LOTE</td>
<td>language(s) other than English</td>
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<tr>
<td>MP</td>
<td>Member of Parliament</td>
</tr>
<tr>
<td>NAATI</td>
<td>National Accreditation Authority for Translators and Interpreters</td>
</tr>
<tr>
<td>NAJIT</td>
<td>National Association of Judiciary Interpreters and Translators (US)</td>
</tr>
<tr>
<td>NCVER</td>
<td>National Centre for Vocational Educational Research</td>
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<tr>
<td>NSWCCA</td>
<td>New South Wales Court of Criminal Appeal</td>
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<tr>
<td>RMIT</td>
<td>Royal Melbourne Institute of Technology</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>US</td>
<td>United States of America</td>
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<tr>
<td>VSCA</td>
<td>Victorian Supreme Court of Appeal</td>
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</tbody>
</table>
Declaration

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Chapter 1: Introduction

1.1 Background

The rapid development of global interconnectedness is changing the dynamics of international relations, giving greater salience to patterns of communication, trade and investment that substantially transcend individual nation states. The consequences of this phenomenon require new conceptions of the world and its challenges, to guide policy and practice across a broad spectrum of national security concerns. The terrorist attacks in North America on 11 September 2001 (known as 9/11) prompted the United States (US) and other nation states to review the way they conceptualise national security, in acknowledgement of new challenges posed by the emergence of globalised terror. Australia was no different. The new threat of terrorism posed by non-state actors saw the globalisation of national security agendas adopted by both Australia and the US taking measures to counter non-traditional threats to security, particularly serious and organised crime. Australia, the US and the United Kingdom (UK) developed national security statements and strategies to provide frameworks from which sector-specific policies were developed to address the diverse range of non-traditional threats that had now entered the national security space. However, in the Australian policy context, this shift in the way security has been conceptualised still lags behind that of Australia’s principal global ally, the US.

Australia has adopted a broadened security agenda to address both traditional and non-traditional threats to security beginning with the so-called ‘revolution in military affairs’ of the 1980s, addressed in the statement on Australia’s Regional Security (Evans 1989). This statement recognised the diminishing distinctions between military affairs and ‘non-traditional’ concerns which had a bearing upon security strategy, including irregular population movements and transnational organised crime. The dynamic and ‘multidimensional’ nature of Australia’s security environment was recognised through to the 1990s (1989, p. 1). Transnational organised crime and terrorism filtered into security policy discourses, but the events of 9/11 were the catalyst for major reconceptualisation of Australia’s security priorities. As will be argued in this thesis, this reconceptualisation does not adequately address the importance of language capability development.
Australia’s first National Security Statement was delivered to Parliament in 2008 by then Prime Minister Kevin Rudd. The statement provided a framework for development of national security policies, such as the Defence White Paper, the Counter Terrorism White Paper and the Organised Crime Strategic Framework, to address a more comprehensive security agenda (Rudd 2008). This important document was followed five years later by *Strong and secure: A strategy for Australia’s national security* (PM&C 2013). Then the *Guide to Australia’s National Security Capability* which provides an overview of Australia’s national security planning (Commonwealth of Australia 2013, p. 3). These documents articulate the objective of combating serious and organised crime as a security concern, but do not explicitly address an important sociocultural dimension.

Contemporary concepts of individual, national and international security transcend historical boundaries that had segregated domestic and military affairs. This multidimensional perspective on security, as explicitly reflected in the United Nations Charter, has seen crime entering the security discourse of many nation states and is explicitly recognised in key national security policy documents as a threat to Australia’s interests. Crime in its multifarious disruptive forms is recognised as a threat to the social fabric and political stability of nation states. Increases in the societal cost associated with the illicit-drug trade, criminal influences within government circles and emergence of non-state violence motivated by religious and/or political ideologies are all factors that define the asymmetrical nature of contemporary threats to national security.

Addressing the issue of serious and organised crime, the Australian Crime Commission (ACC) reported that Australia continues to experience increases in the importation and domestic production of illicit substances representing an increased threat to the Australian community. The ACC’s primary focus is to combat illicit-drug markets in an effort to reduce serious and organised crime, and prevent the proceeds of crime being used to support further criminal activity, including sponsorship of armed non-state actors overseas (ACC 2012). The narcotics trade forms part of a global threat heightened by the nature of globalisation affecting state and individual security in myriad and mutually reinforcing ways (Battersby & Siracusa 2009).

The sociocultural connection between crime and security is evident in courtrooms across Australia. Evidence of drug-related activity presented in court hearings is increasingly supported by translated transcripts from electronic surveillance methods.
Community interpreters and/or translators engaged by law enforcement agencies translate many of the transcripts used for evidentiary purposes in drug-related trials from languages other than English (LOTE). Analysis of translated transcripts and the environments within which they are produced and implemented provides an opportunity to evaluate the effectiveness of language capability upon which law enforcement agencies rely to meet national security objectives.

Despite the central importance of transcribed and translated LOTE evidence in such cases, Australia has yet to produce a policy that clearly articulates the importance of developing and maintaining a language capability to meet the objectives of a broadened and deepened national security agenda. The training and accreditation structures supporting the sum of Australia’s language capacity relied upon to meet security objectives, both traditional and non-traditional, have remained largely unchanged for four decades. Australian law enforcement agencies rely upon community interpreters and translators accredited by the National Accreditation Authority for Translators and Interpreters (NAATI), and the Australian Defence Force relies primarily upon language-trained graduates from the Defence Force School of Languages. These two primary sources of language expertise remain divided between traditional and non-traditional sectors of security. Australia has yet to implement a national security languages policy to develop the language capability Australia needs in a broadened security environment.

In contrast to Australia, the US has embraced a holistic approach to addressing the language capability it needs to respond to national security objectives. Immediately following the 9/11 terrorist attacks, the National Security Agency and other intelligence and law enforcement agencies quickly reviewed all telephone intercepts looking for communication that referred to the incident. It was later discovered that coded language had been used in emails between the perpetrators. In emails sent between the coordinators of the attack who masked themselves as students discussing various fields of study, the word ‘architecture’ was used to refer to the World Trade Centre, ‘arts’ referred to the Pentagon, ‘law’ meaning the Capitol and ‘politics’ referring to the White House. In separate communication, the terrorists referred to 9/11 in a riddle that included the following terms: ‘two branches, a slash, and a lollipop’ meaning ‘11/9’ which is the way the date ‘9/11’ is written in Europe; the location from which the attack was coordinated (Bamford 2008, p. 71). The National Security Agency also intercepted
two messages communicated through payphones in Afghanistan and another party located in Saudi Arabia that had been sent the day before 9/11. One said ‘Tomorrow is zero hour’ and the other ‘The match begins tomorrow’. However, it remains unclear whether these messages were actually referring to the attacks on 11 September 2001 (2008, p. 92).

Looking to the US experience can help bring context to the importance of the language capability to Australia’s national security. In relation to forensic transcription/translation, Cordero-Esquivel and Cordero state that following the 9/11 terrorist attacks, a ‘serious deficiency’ in US intelligence capabilities was made apparent by the abundance of foreign language recordings that had not been transcribed or translated due to ‘a dire lack of linguists’ (2011). Since the 9/11 attacks, the number of intercepted communications has significantly increased requiring transcription/translation for ‘homeland security and court purposes’. The authors emphasise the significance of foreign language services to national security:

Strong foreign language transcription and translation skills and an adequate and a well trained work force are essential to the provision of equal access to the courts and a fair trial for the ever increasing number of non-English speaking defendants, as well as for the successful performance of our country’s foreign intelligence and homeland security missions (2011, p. 1).

The authors further argue that ‘foreign language expertise is a key component in gathering intelligence and, in turn, timely analysing and acting on the intelligence gathered’ and call for adequate funding to be made available for training language professionals in the skills of transcription and translation of recordings in LOTE (Cordero-Esquivel & Cordero 2011).

In contrast to Australia’s response to 9/11, the US, introduced the National Security Language Initiative in 2006 under the George W Bush administration with the aim of addressing deficiencies in language capability identified during the post-incident analysis. The initiative aims to build the US language capability needed to meet national security objectives (US Department of Education 2008). This policy initiative taken by the US has not been mirrored by Australian policy makers, which is asynchronous to the security relationship Australia has with its closest security partner.

The Australian Defence Force and law enforcement agencies strive to address broadened national security objectives with the language resources available to each.
This research investigates language capability relied upon to support law enforcement operations targeting serious and organised crime, an activity residing in the non-traditional sector of security. Using qualitative interviews and discourse analysis of translated transcripts presented in drug-related trials, this research provides evidence of systemic deficiencies in language capability upon which law enforcement agencies rely. It is argued that these deficiencies have implications for meeting Australia’s objectives in a broadened security agenda. This study reveals a gap in Australia’s holistic approach to mitigating security risks when the two key sectors of security, law enforcement and the Australian Defence Force, are each supported by vastly different training and accreditation pathways that produce the sum of Australia’s language capability.

Aside from the relevant literature, the approach taken to this enquiry is informed by the researcher’s experience in government departments as a capability development officer in counter-terrorism, a manager of special intelligence resources, an intelligence analyst in areas of national security and law enforcement, and as a professional Vietnamese translator and NAATI examiner. This researcher has received specialised transcription skills training in Australia and the US for military purposes, and has applied these skills in areas of national security and law enforcement.

1.2 Context

The context of this enquiry is situated on two levels: at the micro level where linguistic analysis of translated transcripts relating to serious and organised crime is carried out to identify deficiencies in language capability; and at the macro level where the results of this analysis inform implications for policy and decision makers in relation to the broader concept of Australia’s national security. Evidence of systemic deficiencies in language capability identified in this study highlight a significant policy disconnect between Australia’s concept of national security and its language capability supporting law enforcement operations.

Australia’s broadened security agenda is supported by a stove-piped construct in language capability. Australia’s broadened concept of national security evolved from a narrow approach following the end of the Cold War, which was articulated in the 1989 statement on Australia’s Regional Security, and significantly reviewed following 9/11. However, some Cold War constructs and concepts remain, adversely affecting a holistic approach to supporting national security objectives. Law enforcement is recognised as
an essential element of the security sector but remains greatly underappreciated (Connery 2014). Evidence supporting this claim is found in this study, which will show that language resources upon which law enforcement agencies rely to combat serious and organised crime are poorly trained and supported. This research will show there is a need for the Australian government to introduce policies to realise a holistic approach to developing and improving Australia’s language capability for national security purposes.

Based on a review of the literature, this research begins from the proposition that Australia’s approach to a broadened security agenda is supported by a disparate language capability landscape. Unsustainable language policies have been influenced by global economic trends resulting in an emphasis placed on a few select languages being taught in Australian schools. The cadre of community interpreters and translators that law enforcement agencies rely upon to help combat serious and organised crime is poorly prepared to effectively perform transcription tasks associated with electronic surveillance operations, particularly in relation to illicit-drug activity. Language capability is important to this aspect of national security noting that the illicit-drug trade is reported to be one of the largest industries in the world (Swanstrom 2007, p. 3).

Serious and organised crime is acknowledged as being a threat to Australia’s national security. Within the scope of a deepened and widened security agenda following the end of the Cold War, the illicit-drug trade is recognised as posing an increased threat to political, economic, human and military security requiring allocation of required resources to counter this non-traditional security issue (Swanstrom 2007). This study contains empirical data revealing systemic deficiencies in language capability upon which law enforcement agencies rely to combat the illicit-drug trade. The results are indicative of a wider problem concerning language capability relied upon to address a wider range of security concerns, such as terrorism.

During initial observations of a drug-related trial heard in the County Court of Victoria, it was apparent to this researcher that translated transcripts used in prosecutorial evidence contained significant errors, a suspicion confirmed by subsequent research. These errors caused confusion and disruption to the flow of communication during the trial and this researcher determined that many errors of translation were not detected. The production and use of translated transcripts from electronic surveillance is an area that lies at the heart of combating serious and
organised crime, yet the nexus between language capability relied upon to produce translated transcripts as evidence and the broader paradigm of national security is an area that has yet to be researched in an Australian context. This research investigated translating and interpreting services upon which law enforcement agencies rely to determine the quality of translated transcripts presented as evidence in Australian courts. The integrity of evidence produced in the form of translated transcripts from electronic surveillance was found to be questionable and indicative of systemic deficiencies in Australia’s language capacity having wider implications for Australia’s national security.

Situating the research within the broader context of national security, this study compares areas of transcription skills and training, intelligence support and working conditions in the law enforcement environment with those areas in the military environment. Law enforcement interpreters/translators (LET) perform similar tasks to military cryptologic linguists (CTL) enabling comparisons to be made between Australia’s two key security sectors—law enforcement and the military—in relation to transcription tasks. CTL are trained to produce transcripts from electronic surveillance to support military operations to meet traditional security objectives. It was decided to approach the research from a grounded theoretical perspective. The starting point was to identify potential problem areas concerning the element of language capability drawn upon to produce translated transcripts as evidence, to investigate how these problems affect judicial processes, identify the causal factors, and to determine the wider implications for Australia’s national security.

At the micro level, this study examined extracts of translated transcripts produced by LET and identified systemic errors in translation that affect judicial procedures and outcomes. Primary data were collected relating to the translation strategies undertaken by LET in preparing translated transcripts for evidentiary purposes. Working environment support and influences were also investigated. A comparison was made with data collected from CTL and cryptologic supervisors (CTS) employed by the Australian Defence Force.

While tasks relating to transcription of LOTE intercepted during electronic surveillance operations are very similar in the areas of law enforcement and the military, significant differences were identified between the two sectors in relation to skills training, accreditation standards and the availability of background
information/intelligence support. Investigation at the micro level of language capability and at the macro level of Australian national security policy revealed that systemic deficiencies in language capability supporting law enforcement have implications for individual, societal and national security.

1.3 Purpose

The purpose of the research is to highlight and address a gap in knowledge relating to Australia’s language capability that law enforcement agencies rely upon to combat serious and organised crime. Commenting on the increased security threat of transnational crime relating to the illicit-drug trade, Swanstrom notes that ‘neither the academic world, nor the policy world has been quick to change their traditional perceptions of security’ (2007, p. 2). Systemic deficiencies in language capability upon which law enforcement agencies rely to respond to the increased threat of harm diminish Australia’s ability to meet national security objectives. Shortfalls in systematic approaches to training and accreditation are exacerbated by inefficiencies associated with inter-jurisdictional policy making structures at the macro level as described by Connery (2013).

A notable disconnect between Australia’s concept of national security and the language capability relied upon to support non-traditional national security objectives formed the impetus from which to approach the research. In contrast, the US implemented national security language related policies to address significant deficiencies in language capability identified in the post-9/11 analysis. This research reveals that, in the absence of explicit policy direction linking the sum of language capacity to national security, Australian law enforcement agencies rely upon an eroded and fragmented language capability to combat serious and organised crime.

The specific aim of the study was to answer the research questions: What evidence points to deficiencies in language capability supporting efforts to combat serious and organised crime? What are the implications for Australia’s national security? Sub-questions were:

1. What evidence points to systemic deficiencies in language capability available to combat illicit-drug activity?
2. How do identified deficiencies affect the judicial process?
3. What causal factors contribute to these deficiencies?
4. What impact do any identified deficiencies have on meeting national security objectives in an Australian context?

The research questions are addressed by applying the research design described in Chapter 3. The results are presented in Chapter 4 and the data are analysed and discussed in Chapter 5.

These questions were answered by investigating the preparation and use of translated transcripts that had been used for evidentiary purposes in drug-related trials. The conclusions of this study inform policymakers and key stakeholders of the current status of Australia’s language capability relied upon to combat serious and organised crime, specifically the illicit-drug trade. There is a significant gap in the literature relating to the nexus between national security and language capability available to support law enforcement agencies in a broadened and deepened security environment. This gap in knowledge is addressed by investigating the preparation and use of translated transcripts for evidentiary purposes from electronic surveillance operations containing information obtained from telephone intercept and covert use of listening devices. Of particular interest to this research is the validity of translated terms alleged to be code words/jargon used by people accused of drug-related offences.

It is proposed that this gap in the literature can largely be attributed to a dearth in knowledge relating to the important role translators and interpreters play in supporting law enforcement electronic surveillance efforts to combat serious and organised crime. The gap in knowledge can also be attributed to difficulties associated with accessing relevant data, the specialised language resources needed to process collected information, and the skills and experience required of the researcher to collect and analyse data in this specialised field. This study aims to bridge the gap between the research findings contained here and their operationalisation in policy, noting that academia and policymakers have been slow to move away from traditional approaches to security (Swanstrom 2007, p. 2).

The methodology this study uses is a mixed-methods approach including observation of court trials; questionnaires and semi-structured interviews with judicial officers, barristers, court interpreters, LET, CTL and CTS; and discourse analysis of court transcripts and Court of Appeals reports.

Court transcripts used in this study contained references to translated transcripts of recorded conversations in the Vietnamese language relating to illicit-drug crime. This
study shows that translating LOTE from audio recordings collected through electronic surveillance is a specialised skill that requires specific training. Transcription is not a common skill held by nationally accredited translators and interpreters frequently engaged by law enforcement agencies to produce translated transcripts for evidentiary purposes and/or to support law enforcement operations.

This study included collection of empirical data from participants with experience as CTL and as CTS in relation to electronic surveillance transcription tasks for strategic, tactical and operational purposes. The purpose of collecting these data was to compare language capability supporting law enforcement with language capability available to support the military sector in relation to transcribing LOTE from electronic surveillance operations. The results from this comparison provide evidence that the two training/ accreditation pathways supporting the sum of Australia’s language capability are distinctly different. Notable systemic deficiencies were identified in language capability available to support the non-traditional national security objective of combating serious and organised crime.

This study involved participants who were proficient in one or more of the following languages: Russian, Mandarin, Cantonese, Indonesian, Malay and Vietnamese. Participants included members of the Australian Defence Force who served in the Cold War, the 1991 Gulf War, Afghanistan and various other special operations involving cryptologic language capability. Judicial officers, barristers, community interpreters and translators involved in trials relating to terrorism, illicit-drug activity, fraud and other categories of serious and organised crime also participated in this study. Representatives from law enforcement and government intelligence agencies, other than research participants, were consulted during development of the research design used in this study. All people will remain anonymous and have been de-identified for the purposes of this project.

1.4 Significance and scope

1.4.1 Significance

This study provides evidence of systemic deficiencies in language capability that presents serious implications for Australia’s security interests. Systematic shortcomings in policy and organisational structures, together with systemic deficiencies in language capability identified in this research are relevant to transcription of all LOTE, and to other areas of organised crime where translated transcripts are produced for operational
and evidentiary purposes. For both practical and convenience purposes, data collected and analysed in this study were primarily drawn from transcripts translated from Vietnamese into English used to prosecute drug-related crime during trials heard in the County Court of Victoria. The findings of this research fill a knowledge gap in relation to Australia’s national security capability by identifying deficiencies in language capability relied upon to realise Australia’s national security functions of threat detection, recognition, identification and monitoring; intelligence information and knowledge sharing and dissemination; and incident response, law enforcement, investigation and forensics, as described in the *Guide to Australia’s National Security Capability* (Commonwealth of Australia 2013, pp. 11–13).

1.4.2 Scope

The scope of this study was limited to collection of publicly accessible information and data received from interviews and questionnaires. Government classified information was not accessed or used during the course of this research. It will be argued that problems in translation strategies evident in the civilian courts system offer insights into potential parallel weaknesses in the military environment. However, the primary focus of this study was language capability upon which law enforcement agencies rely. It was not the objective of the research to investigate the effectiveness or otherwise of language capability supporting the military sector. However, data relating to language capability supporting electronic surveillance operations in the military sector helped identify systematic shortcomings in the areas of language training, intelligence support, and translation approaches in the law enforcement environment.

Although qualitative data were collected from participants with experience and expertise in a variety of LOTE, the primary data collected and analysed in this study were limited to samples of court transcripts associated with Vietnamese drug-related crime. However, the findings are highly symptomatic of the potential for systemic errors to be found in translated transcripts produced by community interpreters and translators of other languages relating to other areas of serious and organised crime. The findings of this study provide a basis from which to frame further research in this area.
1.5 Thesis outline

This study explores the relationship between national security and language capability upon which law enforcement agencies rely, and provides evidence of deficiencies in Australia’s capacity to combat serious and organised crime. The findings are realised by investigating language resources relied upon to produce translated transcripts from electronic surveillance operations for use as evidence in court. The areas of investigation included skills and training, intelligence support, the working environment and accuracy of translated transcripts.

Chapter 1 provides an introduction to this research project. Chapter 2 comprises a review of the literature relating to how Australia conceptualises national security, language skills and training, how translated transcripts are used in court and the methodological approaches relevant to this study. The methodology and a description of the research design applied in this research are explained in Chapter 3 and the results of data collected are detailed in Chapter 4. Analysis of the data is discussed against the objectives of the research in Chapter 5 and conclusions of the study are contained in Chapter 6.

Evidence of errors identified in translated transcripts used for evidentiary purposes in drug-related trials points to deficiencies in language capability supporting efforts to combat serious and organised crime. The implications for Australia’s national security are that Australia’s language capability is not adequately prepared to respond to non-traditional security threats in the contemporary era of a broader and deeper security agenda.

Errors of distortion, omission, unjustified additions and mistranslations of alleged code words detected in translated transcripts used in court are evidence of deficiencies in language capability relied upon to combat illicit-drug activity. These errors cause significant delays in court proceedings and often remain undetected throughout the trial. This results in flawed evidence that misleads the jury’s understanding of the recorded utterance in LOTE and therefore undermines the integrity of the judicial system. Causal factors leading to these errors include:

- inadequate training of law enforcement engaged community translators and interpreters
- poor levels of background information/intelligence support
misconceptions law enforcement agencies and the courts hold about the accuracy of translated transcripts

absence of policy direction supporting a holistic development of Australia’s language capability.

The impact this identified deficiency in language capability has on meeting Australia’s national security objectives is clearly linked to both the traditional and non-traditional areas of security faced with countering the increased threat from non-state actors. Law enforcement agencies are increasingly relied upon to provide indication and warning of imminent threats to national security from inside and outside Australia’s territorial borders. Australia’s potential to counter these threats can and should be optimised by addressing deficiencies in language capability identified in this thesis. These deficiencies are directly relevant to Australia’s national security function of threat detection, recognition, identification and monitoring where law enforcement agencies are required to maintain a protection capability to ‘detect and deter threats against diplomatic, official and defence establishments, dignitaries and major national events both in Australia and offshore’ (Commonwealth of Australia 2013, p. 11).
Chapter 2: Literature review

2.1 Introduction

Australia faces convergent threats in a broadened security space, but has maintained divergent policies relating to security and language capability development. The literature reveals that Australia has taken a broadened and deepened approach to its security agenda listing serious and organised crime as a key threat to national security, but has neglected to emphasise the importance of language capability required to meet its objectives.

This chapter reviews the literature relating to security theory to bring context to the way Australia has conceptualised national security, as promulgated in its key security policy documents beginning with the 1989 Australia’s Regional Security, and followed by the 2008 National Security Statement and the 2013 National Security Strategy. Literature relating to the national security–criminal nexus is also reviewed and relevant points are linked to the dimension of language capability and intelligence-led policing. Noting that law enforcement agencies rely heavily on language expertise provided by the translation and interpreting industry, intelligence analysis and the translation process are discussed to bring context to the national security–language nexus. Literature relating to electronic surveillance and use of translated transcripts for evidentiary purposes is reviewed, and systemic problems associated with translation of drug-related code words and jargon are discussed.

A review of the literature relevant to this area of research is framed to address language capability used to support law enforcement objectives under Australia’s broadened national security agenda. The literature review seeks to provide an understanding of how this research is positioned by critically evaluating literature relating to areas of national security, language capability and use of translated transcripts as evidence. No literature, based on empirical research, was identified that addresses the veracity of translated transcripts used as evidence in court to prosecute serious and organised crime; a gap in knowledge this study aims to fill.

2.2 Convergent threats: Divergent policies

The way Australia conceptualises security is captured in the National Security Statement (Rudd 2008) and the National Security Strategy (PM&C 2013). Both
documents articulate a broadened and deepened security agenda for Australia. The Australian government has clearly recognised the need for a broadening and deepening of the security agenda to include the issue of combating serious and organised crime to address the growing list of national security objectives. In order to frame this enquiry around language capability within the context of national security, this section discusses how security theorists analyse and conceptualise security. It also reviews the literature describing the security–crime–language nexus and discusses the language capability disconnect in the Australian context. The literature review will show that converging threats have culminated in a widened security agenda in contrast to the divergent policy approaches relating to security and language capability. It is argued that this latter situation is manifested within a broadened security agenda supported by traditional security structures. These structures continue to compartmentalise essential information and resources required to address the wider spectrum of national security issues, which include non-traditional threats.

2.2.1 Broadened concepts – narrow constructs

The construct of Australia’s language capability supporting law enforcement agencies has remained largely unchanged since before the end of the Cold War, and can be described as a neglected yet indispensable resource required to combat serious and organised crime. In an Australian context, the importance of language capability required to combat serious and organised crime has not been recognised in a broadened national security agenda. This section reviews the literature that describes traditionalist and non-traditionalist views relating to national security policymaking bringing context to the current status of Australia’s national security–language capability disconnect. The narrow and widened perspectives on security are discussed along with theoretical perspectives from which to view Australia’s position along the spectrum spanning traditional and non-traditional approaches. The arguments contained in this literature review show that a nexus needs to be explicitly established between Australia’s national security objectives and the sum of Australia’s language capability in order to optimise Australia’s ability to combat serious and organised crime. This can ultimately be achieved through effective policy-making and decision-making structures that transcend traditional organisational and jurisdictional boundaries.
It is now widely accepted that security encompasses more than just military and geopolitical affairs. In Australia’s 2013 National Security Strategy, national security is described as ‘a broad and evolving concept’ and is concerned with how Australia takes preventative measures and prepares for threats to ‘sovereignty, people, assets, infrastructure and institutions’ (Commonwealth of Australia 2013, p. 5). Prior to the increased effects of globalisation, debate among scholars of security was more intensely focused on narrow than on wide perspectives. While traditionalist approaches to security adopt a narrow view and advocate primacy of the military sector, others propose that a broader political perspective should prevail allowing for a widening of the security agenda to include such issues as health, environmental and economic interests (Buzan et al. 1998, p. 3). The phenomena of a globalised era has required nation states to look further afield than maintaining traditional approaches to foreign policy which rely on military capability. Security and insecurity are now conditioned upon social, economic, environmental, moral and cultural aspects (Burgess 2008, p. 60); however, traditional structures still exist. For security studies to remain relevant in an increasingly globalised environment, security objectives, the means of achieving them and the relationship between security and domestic affairs need to be questioned (Snyder 2008, p. 8).

The narrow perspective on security is argued by traditionalists advocating that military elements and the state are central elements of security (Ungerer 2009, p. 5). Looking through the lens of a traditionalist, security concerns itself with those matters representing an existential threat to a designated referent object typically being the state encompassing government, territory and society (Buzan 1991, p. 21). Traditionalists defend their state-centric position arguing that widening of the security agenda to involve a myriad of other issues, such as the environment and health, risks diluting the intellectual coherence of what makes an issue a matter of security, and creates further difficulties in finding ways to resolve such issues (Walt 1991). Cautioning against bringing a host of issues to the security agenda, Baldwin observes that nation states have placed more importance on the redefinition of policy agendas rather than focusing on developing concepts of security (1997).

Not all threats and concerns are necessarily designated security issues. Supporting a broadened, yet conditional, concept of national security, Buzan et al. acknowledge that it would be counterproductive to designate all issues of concern
tagged with the word security (1998). The authors note that by doing so would make it difficult to prioritise resources required to address important issues of security in a coherent manner; Miller (2001) shares this view. To overcome this dilemma, Löwenheim calls for a precise definition of the concept of security (2002, p. 520). However, precise definitions of security have proven elusive due to the inherent tension between the state and the individuals that reside within it. Buzan et al. propose a framework for analysis in order to bring coherence to a widened security agenda that includes the significance of the military sector, but which also accommodates security-related issues in the societal sector. There are two dimensions to this framework. First, is recognition of the material interconnections between military security issues on the one hand and complex patterns of economic, social and cultural globalisation on the other. Second, is the process of ‘securitisation’ in which certain issues are elevated to matters of national security concern to legitimate state interventions, through military or police actions of varying intensity or through policy reform (1998).

The Copenhagen School’s concept of securitisation can be considered a more extreme type of politicisation and the term, applied in the School’s sense, also incorporates ‘de-politicisation’ and extension of state power and control by closing-off security affairs to public scrutiny. To put this into perspective, any issue can be placed within a spectrum that ranges from non-politicised (no state involvement) through politicised (government involvement) to securitised (emergency measures taken outside of normal political procedure) (Buzan et al. 1998, p. 23). In order to better understand the concept of securitisation it is necessary to understand what makes an issue worthy of securitising. This leads to defining what needs to be securitised, referred to within securitisation theory as ‘the referent object’. The referent object—in the case of it being the state—is usually represented by the government of that state and is referred to as the ‘security actor’. The security actor advocates securitising an issue through a ‘speech act’, which is some form of linguistic and/or semiotic communication that promotes moving an issue into the realm of securitisation. This introduces a large degree of ambiguity into the analysis of security, and draws attention necessarily to the intellectual or cognitive processes through which security threats are either identified or interpreted (1998, p. 39).
Within the conceptual framework of securitisation, Buzan et al. analysed security in terms of sectors, that is the military, environmental and economic, as well as societal sectors. By comparing security actors and referent objects between these sectors, the authors reveal that perspectives on security become quite different and boundaries become less clear, particularly in relation to the military and societal sectors (1998). This blurring of boundaries is evident in Australia’s 2008 National Security Statement, which includes non-traditional sectors, such as combating serious and organised crime, the environment and health as part of the widened security agenda (Rudd 2008). Applying terminology used in securitisation theory, the aforementioned issue areas have been ‘securitised’ within Australia’s broadened concept of security. This shift increases the level of sophistication necessary to ‘manage’ Australia’s new security landscape. However, the place of language capability in Australia’s broadening security agenda has not been considered at a policy level in the same way or to the same extent as did the US following the events of 9/11. Yet this language space—semantic interpretations of security aside—brings to the forefront the critical role of language skills and knowledge of language as a social and cultural phenomenon. In a security environment shaped by blurred boundaries and ambiguous threats the consequences of interpretive errors can be far reaching.

This study will show that Australia has placed more emphasis on developing language capability in the military sector than in the law enforcement sector. The modern role of the military is multifarious. The military sector has been described as concerning itself primarily with the security of the state. However, while sovereignty defines the modern state, which assumes the ‘exclusive right to self-government over a specified territory and its population’, other actors are working on their own agendas. It is the function of the military security agenda to defend the state or governments, not only from internal and external military threats, but also from those of a non-military nature (Buzan et al. 1998, p. 49). When faced with internal threats to the state, the military concerns itself with its capacity to maintain civil order, territorial integrity and the machinery of government on behalf of the state (Ayoob 1995). An emphasis placed on military capability to address non-traditional security threats has been evident in the Australian context relating to issues such as unauthorised people movements and combating the illicit-drug trade emanating from the Middle East. A significant element of this military capability is language.
capacity, being the capability to translate and interpret LOTE for operational and strategic intelligence purposes. The Australian Defence Force relies upon a language capability sourced from training provided at the Defence Force School of Languages to meet its objectives.

When discussing the seemingly obscure boundaries between international, national and domestic security, internal concerns such as intra-societal violence can provoke a decision to place counter-crime policies on the security agenda, as is the case in the Australian security context. By placing law and order on the security agenda, society as a whole becomes the referent object, with politicians and state agents labelled the ‘securitising actors’ (Buzan et al. 1998). Therefore, societies and individuals within states also become part of the global security paradigm, as argued by Löwenheim (2002). However, Löwenheim narrows the pathway to the securitisation of criminal acts by proposing that in relation to transnational crime, ‘security should be defined only as freedom from organised violence and the ability to ward it off if necessary’, which should not include all aspects of the illicit-drug trade (p. 522). Then again, freedom from organised violence must surely entail all measures designed to realise this objective, including the negation of precursor threats from criminal elements.

Australia has explicitly included serious and organised crime as an issue of national security. In relation to the military sector context, the addition of transnational crime to the security agenda differs from what is understood to be standard security only by the fact that the focus of the military sector is directed inward instead of outward (Buzan et al. 1998, p. 54). In the post-Cold War era, there is sound argument that military threats are becoming less important in relations between industrial democracies (1998, p. 62), a view shared by Leahy who argues for more security and less defence in the face of new emerging threats (2010). Refocusing traditional military approaches to security will inevitably affect security within the societal sector. However, it appears that military language capability, developed to address non-traditional threats in the societal sector, extends only as far as the military sector allows it to in order to meet its own objectives and not necessarily in concert with the objectives of law enforcement agencies.

Perspectives on security are articulated in ‘speech acts’ in the form of security policy documents describing and allocating resources to meet objectives of a
broadened security agenda (Buzan et al. 1998). The Australian Defence Force has articulated the importance it places on language capability to support its objectives in the 2009 Defence White Paper which allocated $20 million to further develop the Australian Defence Force’s language capability (Fitzgibbon 2009). However, this is only reflective of resources allocated to support language capability in the traditional sector, and is not indicative of resources made available to develop language capability upon which law enforcement agencies rely in the societal sector. In the absence of a holistic approach to security and language policy, the language capability supporting counter-crime objectives has been neglected.

A distinction can be made between security of the state and security of the individuals who reside within that state. The state can be defined by territorial borders and formal membership, in contrast to society which is a much more fluid phenomenon (Buzan et al. 1998). Society is about identity, about groups and about individuals identifying themselves as being part of a particular community although these communities are intrinsically entwined with the machinery of government (1998, p. 120). Identity can take many forms and can be the product of self-appointed association with objective factors, such as language or location, in contrast with other options of which individuals or groups can be a part (1998, p. 120). Australian residents travelling to Syria and Iraq to participate in sectarian conflict is an example of how identity can be demonstrated through self-appointed association. Notions of security for these individuals is in direct conflict with how the state views security, and evidence of how this tension manifests itself within an Australian context was prevalent at the time of writing. While this thesis does not intend to interrogate competing identity and security claims, international terrorism again focuses attention on the broader socio-cultural aspects of national security, to which issues of language and interpretation are central. For example, at the time of writing, the veracity of translated transcripts from telephone interception, presented as evidence during a terrorism-related trial in Sydney, had been brought into question (Farrell 2014).

The sum of Australia’s language capability can be described as being divided along traditional (security of the state) and non-traditional (societal) security lines. Language requirements of the military sector supporting the state are met through training provided by the Australian Defence Force School of Languages, and societal
language requirements are realised through the eclectic structure of the translation and interpreting industry, comprising freelancing community interpreters and translators accredited by NAATI. The disparity in training and accreditation arrangements between these two distinctly separate structures is the subject of this research, which reveals the consequences of systematic shortfalls in national security policy-making and judicial processes. It will be shown that emphasis placed on language capability development following a traditional structure is not conducive to meeting Australia’s broadened national security objectives, particularly in relation to combating serious and organised crime.

Part of the traditional structure of language training is prevalent throughout government departments. Following years of neglect in the the area of building language proficiency, it is acknowledged that the Australian Department of Foreign Affairs and Trade (DFAT) significantly increased expenditure on language training with $6.1 million spent in 2012, representing more than double compared with 2009 (Oliver 2012). The introduction of the New Colombo Scholarship Program sponsored by DFAT provides successful candidates with an opportunity to further their studies in a number of overseas locations, and to improve cultural understanding and language skills (DFAT 2015). However, while these efforts do improve Australia’s language capacity in diplomatic and other important areas such as academia, the lack of a holistic approach to specifically address the nation’s language capability needs from a national security perspective is evident.

The divided nature of Australia’s language capability has evolved from state-centric traditional perspectives on security. Australian language policies have focused the teaching of languages in schools to meet the nation’s economic and diplomatic objectives, and have not been explicitly linked to national security objectives relating to law enforcement. This is because governments are in a position to securitise issues to further their own agendas. The political security agenda can be considered the common denominator that underpins the aforementioned societal and military security sectors (Buzan et al. 1998, pp. 141–52). Buzan et al. describe politics as ‘the shaping of human behaviour for the purposes of governing large groups of people’ (1998, p. 35).

Shaping Australia’s identity has been the focus of national language policies. The Australian government declared English as the national language when it
introduced Australia’s Literacy and Languages Policy immediately following the end of the Cold War (Slaughter 2011). This significant shift can be defined as a ‘speech act’ designed to securitise the national language of English; a move designed to shape society for the purposes of facilitating ease of governance, to maintain the integrity of identity through social cohesion and to minimise political threats that could undermine state security. The rationale of introducing language and literacy policies that advocate a monolingual societal model to improve social cohesion and facilitate better communication may have merit; however, the absence of coordinated language policies addressing national security concerns leaves a void in language capability required to combat serious and organised crime. The current structure of Australia’s translation and interpreting industry is relied upon to meet both the domestic demands of Australia’s linguistically diverse community and the requirements of law enforcement agencies combating serious and organised crime. An effective language capability needed to monitor and translate LOTE spoken by criminal elements to keep the state and its residents safe, is arguably more important now than it has ever been with the increased threat from non-state actors. This was realised by the George W Bush administration, which introduced the National Security Language Initiative in 2006 (US Government 2011).

Further to the point of social cohesion: ideas of nationalism and political ideology are key factors that bind the fabric of state integrity, and posing a threat to these ideas also poses a threat to maintaining political order. Buzan et al. describe a strong state as one that will:

- typically be fairly invulnerable in the political sector; it will not be ethnically divided, and thus not open to secessionist action. Its government will be neither divorced from the general opinions of its citizens nor dependent upon suppressing views and information, and therefore will be fairly invulnerable to external actors supporting oppositional voices (1998, p. 152).

An obvious and fundamental aspect of ethnicity is language. Elements of ethnic enclaves that potentially pose a security threat may choose to communicate in their native tongue and use veiled speech to avoid detection, as was demonstrated by those Australian residents found guilty of planning a terrorist act – Operation Pendennis (The Age, viewed 5 March 2014). Public awareness of advances in technology and increased powers of surveillance available to law enforcement and
intelligence agencies may further influence perpetrators of serious and organised crime from non-English speaking backgrounds to communicate through electronic means in their native language using coded terms and phrases. It therefore follows that a substantially enhanced language capability is essential to preventing and responding to threats and acts of serious and organised crime, and to guarding against the mistaken interpretation of intelligence.

In this post-9/11 environment, Australia has neglected to develop the language capability required to translate LOTE spoken by criminal elements of the country’s increasingly diverse cultural and linguistic demographic. A clear disconnect is prevalent in the national security–language policy nexus, in an era where political security concerns include non-military threats that may destabilise political units. Threats such as increases in illicit-drug activity significantly affect trade and politics and pose a direct threat to the stability of states (Swanstrom 2007, p. 4). Successive governments have recognised the illicit-drug trade as a threat to Australia’s security interests. However, language capability development outside the military sector has not been adequately addressed to counter this significant security challenge.

The idea of security has been discussed, providing a macro level of appreciation of how concepts of national security and individual security are intertwined with security of the state (Buzan 1983, p. 21). The structure of Australia’s language capability, which is poorly supported at the societal level yet generously resourced at the state level through the military sector, demonstrates Buzan’s observations about the multi-level and ‘systemic’ nature of security. Buzan questions the worth of using the terms ‘individual’, ‘state’ and ‘international’ security, proposing that it may be more appropriate to use the term ‘systemic security’ (1983, p. 21). Having explored the materially and conceptually integrated nature of security at all levels, from a theoretical perspective, there are grounds to contend there is an apparent disconnect between Australia’s concept of national security and language policy supporting law enforcement, which remains at odds with the current broadened and deepened security agenda, as described in Australia’s key security policies.

Buzan’s line of reasoning is open to criticism. Baldwin criticises Buzan, and writers on security generally, for not defining security as a starting point to discuss and understand its function. The author further states that Buzan has confused
conceptual problems with empirical fact, adding that conflicts are inevitable between the pursuit of security for the state and the individual, making the point that this is not a problem of concept. Baldwin criticises Buzan for oversimplifying the concept of security by not adequately describing the referent object to be securitised. He claims that Buzan’s approach is deficient in terms of specificity when considering security for whom, for which values, how much security is required to address what threats, how, at what cost and over what time period (Baldwin 1997). Then again, as noted, Buzan and Waever’s work is located at the intersection between the material and the subjective, where ambiguities abound. A broad definition of security provides the state with the leverage to determine which issues are worthy of securitising and which strategies and resources need to be mobilised. The community translation and interpreting industry that supports law enforcement agencies is part of the broader national language capability that has not been holistically reviewed or incorporated in the discourse and practices of national security. It therefore remains poorly resourced and arguably deficient in its ability to support law enforcement.

Individual security sectors may also lobby their own interests within the context of national security in an endeavour to emphasise their importance (Baldwin 1997). This, Baldwin claims, negates Buzan’s proposal that those issues considered important in terms of urgency should be promoted to the security agenda. Baldwin argues that Buzan’s approach jeopardises rational policy analysis by conceptually prejudging which issues are worthy of inclusion in the security agenda (1997). McDonald expresses an alternative view by saying the fundamental problem with the securitisation framework is that it is excessively narrow, where only those issues that present a danger and/or threat make it to the national security agenda. Arguing for a broader approach to the construction of security, McDonald sees merit in moving beyond defining only those issues considered to be threats as security issues in order to capture a broader spectrum of security-relevant concerns (2008).

The Copenhagen School’s approach to the concept of ‘securitisation’, as proposed by Buzan, is clearly a state-centric approach and, although it purports to be inclusive of the concept of societal security, the framework seems to allow only those issues that ‘reify claims to collective identity as legitimately securitisable’ (Burke 2007, p. 14). From a language policy perspective, this is an interesting point when considering that states may seek to coercively propagate a monolingual social
environment so as to manufacture social uniformity and conformity. Along these lines, a broadening of the security agenda may invoke issues, such as migration and identity, being seen as threats to national security. The securitisation of unauthorised people movements is a good example (Burke 2007).

Considering Baldwin’s criticisms of Buzan’s concept of securitisation, and Burke’s observations, the security agenda has unquestionably moved into the ‘broadening and deepening’ phase. ‘Culture’ has already been securitised to the extent that migrants to Australia are now required to undergo testing to determine their ‘cultural fit’. However, these divergent views of what issues should be securitised and how they should be identified, highlight the disparity in approaches to language capability supporting the interests of the individual and that of the state. This dichotomising of the national security agenda reaffirms boundaries that have historically divided concepts of individual, societal and national security in practical terms. It is argued that structural arrangements supporting the sum of Australia’s language capability contradict political rhetoric of pursuing broadened national security objectives, which include combating serious and organised crime. Australia acknowledges the convergence of asymmetrical threats to security, but maintains divergent policies that divide language capability supporting traditional and non-traditional security sectors. In contrast, across the Pacific the National Security Language Initiative is evidence of the US government explicitly linking national security, language capacity and policy to build the language capacity it needs to keep its citizens safe.

Australia remains at odds with the US in relation to how it views the importance of language capability against a widened national security agenda. Buzan et al. argue that in order for a ‘widened’ security agenda encompassing non-traditional sectors to be ‘fully meaningful’ it is necessary to move beyond considering the state to be the referent object (1998, p. 8). The authors state that ‘classical security complex theory’ provides an analytical framework for dealing with regional sub-systems as objects used to enable analysts to conduct comparative analysis across regions, stating that it is usually a favoured tool of traditionalists. This is relevant to the Australia–United States security relationship. A ‘security complex’ situation is described as ‘a set of states whose major security perceptions and concerns are so interlinked that their national security problems cannot
reasonably be analysed or resolved apart from one another’ (1998, p. 8). Although analysis of clusters of states in relation to each other is not the focus of this enquiry, it is argued that a ‘security complex’ arrangement defines the security relationship that exists between the US and Australia. This relationship is established as one of Australia’s ‘pillars of security’ in Australia’s National Security Strategy 2013. However, a significant difference in security perception and concern can be distinguished between the US and Australia: the disparity between how the two countries view the importance of language capacity in relation to national security.

Like the US national security strategy of 2010, Australia’s 2008 National Security Statement reflects a widened security agenda to encompass a range of non-traditional sectors of security citing prevention, detection and disruption of serious and organised crime as one of eight pillars of security. How Buzan’s analysis of security helps frame this enquiry is explained in his own words about viewing the concept as systemic security. He says the aim of considering security as an analytic whole taking into account perspectives at individual levels is not to provide solutions to specific policy problems, but to offer alternative viewpoints in relation to how particular policy issues are considered and addressed (Buzan 1983, p. 248). Building upon Buzan’s early and more recent work, this research offers an alternative view to how Australia’s policies on languages should be considered within the context of national security to benefit both the state and its residents.

Buzan’s theory of securitisation advocates a widened security agenda with the flexibility to securitise and desecuritise issues to enable resources to be effectively applied in order of priority and importance from a state management perspective. However, the concept draws criticism as being too narrow and selective allowing only those issues considered threats to be securitised. Acknowledging the usefulness of securitisation theory, McDonald calls for more flexibility within the securitisation framework to accommodate other non-threatening issues of security. Relevant to this research is the non-threatening security issue of language capability supporting law enforcement, a neglected area in Australia’s contemporary security agenda.

The approach Buzan proposes and the argument Baldwin presents reveal that while security theorists may not adequately rationalise divergent concepts and approaches to security, perspectives applied to analysing the security paradigm certainly are; further reinforcing Wolfers’ observation that national security is
symbolically ambiguous (1952). Arguments of how policymakers should define security are not central to this study; however, the preceding discussion of differing perspectives helps to create the conceptual scaffolding necessary to link language capability and law enforcement with the national security agenda. Simply, language capability becomes relevant in the security domain because deficiencies in Australia’s language capability severely restrict governmental capacity to distinguish real security threats.

Australia’s key policy instruments, the 2008 National Security Statement and the 2013 National Security Strategy, clearly acknowledge a broadened and deepened security agenda emphasising close cooperation with the US. It is through the lens of a widened security agenda advocated by Buzan and others, and adopted by successive Australian governments, that this enquiry examines and seeks to understand how Australia’s language capacity is positioned to support law enforcement agencies in combating serious and organised crime to meet national security objectives.

2.2.2 Australian language policies

One day after former Australian Prime Minister John Howard arrived in Washington for bilateral talks with former President George W Bush in September 2001 the two World Trade towers in New York were infamously attacked and destroyed. ‘9/11’ shocked the US and the world into reviewing national security arrangements. Once again US foreign language capacity was scrutinised, just as it had been following the Russian launch of Sputnik I in 1957 and during the height of the Cold War in the late 1970s and early 1980s (Lo Bianco 2007, p. 13). The reaction was swift, with the US House Permanent Select Committee on Intelligence producing a report revealing that language ability was ‘the single greatest need in the intelligence community’ and the US community was called upon to boost the foreign language capacity in critical languages (Jackson & Malone 2009, p. 2). The US explicitly linked national language capability development with national security. Australia has yet to explicitly link the sum of Australia’s language capability with national security in government policies.

The 2004 Flood Inquiry reported that ‘language proficiency represents another core competency for the Australian Intelligence Community’ and commented that ‘Australian intelligence agencies are deficient in this area, indicative of inadequate
levels of formal foreign language training in Australia’ (Flood 2004, p. 155). Yet, Australian government policies have not explicitly linked language capacity to national security. In contrast, in the US language policy took centre stage after 2001 following recommendations arising from the Bremer commission report on terrorism. The US government launched the National Security Language Initiative to build the language capacity the US needs for national security purposes (US Department of Education 2008). To bring context to that part of Australia’s language capability realised through the translation and interpreting industry, this section discusses development of languages policy, such as it is, in Australia.

The Australian translation and interpreting industry has not been adequately supported through either language policy making or training and education initiatives. A critical policy decision made in the early 1990s that emphasised English literacy rates saw the translation and interpreting industry continue to deteriorate to become a neglected, but increasingly important part of Australia’s language capability upon which law enforcement agencies and courts rely.

The National Policy on Languages, introduced in 1987 and phased out in 1991, was arguably Australia’s most comprehensive policy; however, it did little to ensure that courses underpinned the professionalisation of the translation and interpreting industry (Ozolins 2001, p. 268). Upon demise of the policy in 1991, a decision was made at ministerial level that language policy would remain within the education portfolio, excluding translation and interpreting. Instead, a proposal was submitted by the then Department of Immigration [today the Department of Immigration and Border Protection] to establish a languages services bureau; however, this proposal was never realised (p. 269). This resulted in the non-alignment of language teaching programs with the translation and interpreting industry in terms of support through education policy. This outcome proved detrimental to the translation and interpreting industry, resulting in lasting consequences affecting development of Australia’s language capability and its ability to support law enforcement agencies combating non-conventional security threats.

Australian language policies have consistently failed to meet their objectives, having little impact on student participation rates in language learning (Liddicoat 2010). Since 1987, there has been a notable decline in the numbers of students studying LOTE and the number of courses offered in LOTE in Australian
universities (Djite 2011, pp. 53–65). Scorino and Papademetre said ‘the rationale for learning languages in Australia remains the fundamental philosophical stumbling block for policy reconstuctors and revisionists’ (2001, p. 321). As argued, language policies have reflected Australia’s prioritisation of a few select Asian languages in pursuit of economic advantage in an increasingly competitive world following the end of the Cold War (Keating 2011). Slaughter argues there is a need to support a wider range of languages as isolating specific languages for economic purposes does not guarantee success (p. 166).

It can be said that Australia ‘securitised’ economic issues above all else following the end of the Cold War, or at least elevated economic reform and international trade to an unprecedented level of national priority. This is understandable with the expanding phenomenon of globalisation requiring Australia to improve its standing internationally and to remain competitive in a rapidly growing global market (Keating 2011). With English quickly evolving to become the global language for international trade and diplomatic purposes, and Australia’s increased emphasis on improving English literacy rates through its 1991 Australian Languages and Literacy Policy, the learning of LOTE became less important in Australian schools and the translating and interpreting industry more distant. But just as international business is not conducted entirely in English, transnational crimes and acts of terror are not planned or implemented purely or even partially in English.

Noting the deterioration of language policies since the 1980s, Djite describes the bottom-up process of language policy development as having been ‘hijacked’ by politically motivated ideologies on both sides of politics. The author concludes that in order for Australia to remain a ‘guiding light of progressive language policy making’ it will need to establish future language policies based on commitments to ‘lifelong learning’ and ‘social harmony’ in order for Australia to effectively realise trade and national security objectives (p. 65). However, this would require the Australian government to refocus language capability development outside the traditional military sector requiring allocation of resources to support development of the translation and interpreting industry, and enhanced LOTE learning in schools and universities to boost the nation’s multilingual resources.
Australia’s inadequate levels of language training were identified in the 2004 Flood Inquiry and were later highlighted by Lo Bianco at the 2007 Languages in Crisis Summit. Lo Bianco stated that:

at present Australia lacks the teaching force to achieve even the goals of a modest language policy [and that] Australians need to learn both Asian and European languages, for reasons of trade, security, proximity, history, culture, intellectual reasons, tourism and recreational pursuits (2007, p. 13).

Teacher supply has been a major weakness in realising language policy objectives. Liddicoat identified deficiencies in teacher supply as a consistent obstacle and argues that, due to a lack of planned implementation processes, language policy has not influenced schooling in Australia, but school context has driven policy direction (2010, p. 22). Lo Bianco, key author of the National Policy on Languages introduced in 1987 and phased out in 1991, said, ‘It is lamentable that in 2007 internationally regarded Australian language policy achievements have been allowed to fragment and erode’ (2007, p. 13).

Some argue for a more comprehensive approach to language policy development that takes into account the humanistic value outlining the cognitive, social, cultural, economic and strategic benefits of language education (Slaughter 2011). Describing the successes and failings of the National Asian Languages and Studies in Australian Schools and the National Asian Language and Studies in Schools Program policies, Slaughter concludes that the policies themselves were undermining their own expansive program objectives by failing to take into account Australia’s linguistic diversity (2011, p. 170). Slaughter further claims that the National Asian Language and Studies in Schools Program does not articulate the broad benefits of language education but is framed within what she calls a ‘vague’ context of providing economic advantage and better opportunities for the community and individuals through studying only four Asian languages as proposed by the Department of Education, Employment and Workplace Relations (p. 170). Slaughter also argues that not only did policy initiatives significantly influence the survival of school language programs, but socio-political events also influenced school communities and the languages that students were willing to study (p. 165). Slaughter’s observations that socio-political events have shaped languages policy only extend to education in schools. Community Languages Australia (2012) and the
Languages and Cultures Network for Australian Universities have also noted shortfalls in second language education (LCNAU 2012, p. 3–4).

This research takes a broader perspective beyond the shaping of language policy for educational purposes alone, and argues for a holistic approach to development of language capability within the context of national security. This approach derives from the extensive evidence presented of serious shortfalls in language skills and also the search for alternative rationales for advancing language learning in an instrumentalised and instrumentalist education policy environment.

Australia’s language policies have come and gone over successive governments and, while focused on economic advantage, have detracted from Australia’s ability to adequately develop the language capability Australia currently needs to address security threats. The inconsistent approach taken to language capacity building in Australia through fragmented, poorly resourced and narrowly focused language education policies, excluding development of the translation and interpreting industry, sheds some light on why the sum of Australia’s national language capability is structured and supported the way it is at the time of writing this thesis. Language policies did not fulfil their stated objectives or meet the expectations of advocates for either multiculturalism or utilitarian approaches, leaving the translation and interpreting industry unsupported. The structures supporting accreditation for community translators and interpreters, and the provision of language training for military linguists to meet traditional national security objectives have remained largely unchanged since the end of the Cold War and even following the events of 9/11.

2.2.3 The national security–criminal–language nexus

Australia has embraced a revised and substantially modernised security agenda as reflected in three key policy documents: the 2008 National Security Statement, the 2012 Australia in the Asian Century White Paper and the 2013 National Security Strategy. The transformative period for Australia’s national security agenda (1999 to 2013) is captured in the 2013 National Security Strategy describing the diverse nature of Australia’s involvement in regional and international affairs ranging from peacekeeping operations in Timor Leste and the Solomon Islands to the campaign against terrorism in Afghanistan (PM&C 2013, p. 9). It is also explicitly expressed that combating serious and organised crime requires a holistic approach that affects
the entire spectrum from individual to state to international security. As explained in the 2013 National Security Strategy, national security ‘is inextricably linked to economic stability, resource sufficiency, good governance and social cohesion’ (p. 5). This is reflective of Buzan’s comment relating to the maintenance of a ‘strong state’ that is not ethnically divided. It also blurs the boundaries between state, societal and individual security.

Contradictions are, however, evident in the maintenance of traditional security structures and processes. Connery states that Australian institutions concerned with national security are inclined to concentrate on aspects of defence and diplomacy rather than on the important strategic role that law enforcement plays in meeting national security objectives (2014). Nation states have been slow to transition from a traditionalist approach to security since the end of the Cold War (Löwenheim 2002). In a broadened security environment governments have difficulty in setting priorities due to the increased number of potential and emerging risks and priority setting may be influenced and realised by interest groups. The key instruments of national security policy are spread across multiple jurisdictions and agencies and, in the face of a much more diverse threat environment, the government functions within a structure that is still compartmentalised and designed to address the predictability of a Cold War paradigm (Ungerer 2009, p. 5). Dysfunctional structural arrangements of inter-jurisdictional committees responsible for the coordination and policy making of security issues are not conducive to the realisation of a cohesive approach to combating organised crime (Connery 2013). This observation is reflected in the divided structural arrangements that provide language resources for meeting traditional security objectives in the military sector, and for combating serious and organised crime in the non-traditional security environment of law enforcement.

Commenting on existing and expanding challenges facing the Australian Intelligence Community the 2011 Independent Review of the Intelligence Community Report (Cornall & Black 2011) defends the logic supporting a distinction between domestic security and foreign intelligence (p. 19) while at the same time endorsing adoption of an all-hazards approach to national security (p. 2). The review clearly says it does not agree with the view that Australia’s intelligence agencies are structured and operating within ‘an out-of-date Cold War model’. Rather, it maintains there is no requirement for any change in the basic structure of
Chapter 2: Literature review

The Australian Intelligence Community (p. 28). The review frequently refers to and supports the findings of the comprehensive 2004 inquiry into Australia’s intelligence services conducted by Mr Philip Flood AO (the Flood Inquiry). The Flood Inquiry reported a shortage of language skills available to the Australian Intelligence Community, and said ‘Australian intelligence agencies are deficient in this area, indicative of inadequate levels of formal foreign language training in Australia’ (Flood 2004, p. 155). Related to Flood’s observations, the Group of Eight identified deficiencies in the capacity and competency levels of community interpreters and translators as critical issues (G8 2007, p. 6). The 2011 ‘periodic’ review into intelligence services does not elaborate or even comment on this area of capability.

The Australian government has not explicitly acknowledged language capability development as important to monitoring ‘closed societies’ or ‘extremist cells’ in Australia and overseas. A broad statement made in the 2011 intelligence review acknowledges the expanded role of the Australian Intelligence Community and its limitations in dealing with closed societies and small extremist cells that may be difficult to detect or stop. It is logical that expertise in LOTE is needed to monitor and counter such activity, a task that transcends organisational boundaries to include law enforcement. As then Attorney-General the Hon. Robert McClelland said, ‘Keeping Australia safe is the job of security, intelligence and law enforcement agencies’, a trans-organisational and jurisdictional responsibility which is clearly promulgated in both the 2008 National Security Statement and the 2013 National Security Strategy (p. 36). It is proposed that a major limitation of monitoring and responding to threats from transnational criminal elements and other non-state actors is the limited pool of language expertise available to support law enforcement surveillance operations.

Australia’s first National Security Statement in 2008 provided the impetus to produce the Commonwealth Organised Crime Strategic Framework in addition to the National Organised Crime Response Plans as part of realising a whole-of-government response to combating serious and organised crime, and was reiterated in the 2013 National Security Strategy. In describing ‘the nexus between organised crime, national security and the economy’, the ACC emphasised that national security:
incorporates, but is not limited to, concepts of sovereignty, border integrity, political and economic strength, strong institutions of State, the safety and wellbeing of citizens, and the strength and depth of relationships and alliances with other nations (ACC 2013, p. 8).

The ACC notes that organised crime is not constrained by geographical borders in an era of globalisation, yet combating organised crime and illicit trade remains ‘constrained by jurisdictional, legislative and state borders’ (p. 4). The ACC report emphasises the importance of establishing strong partnerships with overseas law enforcement agencies being a fundamental requirement to combating organised crime (p. 5). The Australian Federal Police (AFP) plays an important role in this area. The function of the Serious and Organised Crime element within the AFP’s Crime Program is clearly stated as follows:

‘Serious and Organise Crime conducts investigations into complex organised criminal activity including the importation and manufacture of illicit substances, money laundering and economic crime, fraud, identity crime and corruption. In order to target the threat posed to Australia's national security by organised crime, Serious and Organised Crime investigations focus on mitigating the key vulnerabilities that are exploited by criminal enterprises, including supply chain logistics on the waterfront, in the airstream and across transnational borders.’ The AFP further emphasises the importance of international connectedness to combat serious and organised crime stating that ‘Serious and Organised Crime also incorporates the AFP’s International Network which cooperates with other Australian Government agencies domestically and abroad to ensure a whole-of-government approach to fighting crime offshore at its source’ (AFP 2015).

This point is echoed in the Australia in the Asia Century White Paper, where it states that partnerships with other countries are essential to addressing the threats posed by non-state actors and transnational criminals, among others. The White Paper further states:

Australian capacities, like those found across the public service in the areas of law enforcement, border protection and health, are increasingly used to deliver sustainable security for Australia and our region (PM&C 2012, p. 232).

Yet Australia has not introduced a policy that explicitly links language capability with law enforcement and/or national security. In contrast, the US
implemented its National Security Language Initiative in 2006 with the aim of building America’s language capability to support national security objectives (US Department of Education 2008). This apparent difference between Australia and the US in approach to language capacity building to support national security objectives appears at odds with the seventh of eight pillars of support listed in Australia’s 2013 National Security Strategy. The anomaly also sits uncomfortably with Buzan’s description of a security complex situation, yet the seventh pillar of security declares the Australia–United States Alliance to be reflective of the evolution of our national security environment (p. 19). Australia is committed to ‘cooperating [with the US] on issues of common interest, including regional security priorities’ and ‘deepening our defence, intelligence and security engagement with the United States’ (p. 35). Buzan’s description of a security complex situation that aligns common approaches with security agendas by individual states is relevant to the Australia–United States mutual cooperation arrangements and approaches to combat serious and organised crime. This is especially relevant to the crime–terror nexus and combined efforts of states to counter threats to their national interests and security alliances.

Since the end of the Cold War, it has been proposed that crime has become an increasingly important element of support to terrorism, although before the 1990s, the two phenomena had been viewed as distinctly different (Makarenko 2004). This can be attributed to post-Cold War environmental issues allowing terrorist groups easier access to advances in technology, financial and global markets, diaspora communities in other countries, weak states and access to increased choice of geographical safe-havens. Criminal activity such as the drug trade and credit card fraud provide sources of revenue for terrorism; Makarenko proposes that this nexus is linked to formation of alliances between criminal and terrorist groups, adding that there has become a blurring of the distinction between politically and criminally motivated violence (2004). Makarenko argues that the security agenda should now consider taking into account the fusion of traditional and emerging threats, and uses this argument as a basis from which to outline a ‘crime–terror continuum’.

Placing the crime–terror nexus on a continuum, Makarenko proposes that a group can move between the two phenomena traditionally referred to as ‘organised crime’ and ‘terrorism’ and place itself anywhere on the spectrum between these two points depending on the environment in which the group is operating. Placing
organised crime at one end of the continuum and terrorism at the other, the author demonstrates how the two form alliances, use terror tactics and/or criminal activities for operational purposes, and converge in the centre creating a ‘black hole’ syndrome which might occur where a state is overthrown by a hybrid group pursing both criminally and politically motivated goals, such as the situation that evolved in Afghanistan following the Soviet troop withdrawal in 1989 (Makarenko 2004).

Non-state actors in the form of criminal and terrorist groups have morphed into increasingly sophisticated and transnational entities posing increased risk to the security of the state (Makarenko 2004; Swanstrom 2007). Makarenko argues that of all the factors contributing to the crime–terror nexus, criminality is clearly the consistently identifiable factor, and notes that while it is necessary to understand the political motivations of terrorist groups, counter-terrorism policies and initiatives may prove more effective were emphasis placed on addressing criminal aspects. This rationale is based on the notion that denial of financial means gained through criminal activity will significantly diminish operational capability upon which terrorist groups depend (2004).

While Makarenko (2004) details the convergence that occurs between criminal and terrorist groups, it is argued that this is not a recent phenomenon. It is widely accepted that criminal, religious and politically motivated violence are frequently connected and often interdependent. Bovenkerk and Chakra (2004) question the generalisability of data used across the literature to draw conclusions concerning the degree of convergence between the two phenomena. They raise the question of how these organisations move from one form of activity to another. Acknowledging that existing international laws and conventions define terrorism, until a clear and globally accepted definition of what constitutes ‘an act of terrorism’ in contrast to what is specifically defined as ‘a criminal act’ is reached, it is proposed that the data Bovenkerk and Chakra seek, and the justification Makarenko uses to distinguish the two extremes will remain ambiguous and arguably meaningless.

2.3 Transnational crime in the Australian context

The nature of organised crime has changed significantly within the past two decades. Criminal networks have shifted away from clearly identifiable vertical and horizontal hierarchies becoming fragmented and loosely connected leading to the phenomenon now commonly described as ‘globalised crime’ (Aguilar-Millan et al.
The threat from transnational criminal activity, which includes terrorism, has not been lost on Australian national security policy makers. Both the 2008 National Security Statement and the 2013 National Security Strategy emphasise that transnational crime, in the form of terrorism and illicit-drug activity, poses a threat to national security. The National Security Statement describes serious and organised crime as being ‘highly adaptive and may link to, or exacerbate, other significant issues of national security, such as terrorism and malicious cyber activity’ (Commonwealth of Australia 2013, p. 11). Supporting these key policy documents, the ACC provides details of the impact the illicit drug trade has on Australian society in its overview of targeting serious and organised crime. Burgess says ‘the most important illegal organised activity surrounds the global distribution of narcotics’ and that it is widely documented that proceeds from drug-related crime support terrorist activity. He argues that illicit-drug activity poses a direct non-military threat to the security of individuals and social cohesion, which ultimately affects the integrity of society (2008, p. 72).

### 2.3.1 Countering transnational crime

The increased production and global distribution of heroin demonstrates how transnational crime is more easily sustainable using the globalised transportation network. Shipments of heroin often involve other aspects of criminality such as illegal people movements and illegal weapons (Aguilar-Millan et al. 2008). A trend has been established seeing transnational crime groups become more technologically advanced and moving towards more typical business models, using legitimate businesses to help launder money for illegal operations. The cellular type business models adopted by transnational criminal groups minimises the risk of disruption to the entire operation. This trend subcontracts smaller expendable groups or individuals to carry out high-risk operations, providing more security assuring the continued functioning of transnational crime groups (Yui 2002).

Australia’s has escalated its response to the threat of transnational crime, especially in the area of countering the illicit-drug trade. In February 2014 the Australian warship *HMAS Melbourne* intercepted two large shipments of heroin off the coast of Tanzania. The shipment was reportedly destined to finance terrorism-related activity. According to a press release, the Australian Commander of
Combined Task Force 150, Commodore Daryl Bates, when referring to the HMAS Melbourne was reported as saying:

During her time with Combined Maritime Forces, she has successfully disrupted a piracy attack, and conducted four successful narcotics seizures, seizing 23.8 kilograms of methamphetamines and now 353 kilograms of heroin. These seizures have severely impacted the funding network of those terrorist organisations that rely on these shipments for income (Navy Today, 23 February 2014).

The Brisbane Times reported that the warship intercepted a further shipment of 190 kilograms of heroin following release of the above statement, with both hauls having an estimated street value of more than $1 billion (23 February 2014). It was also reported that HMAS Darwin had seized $1.5 billion of illicit drugs during a tour of the Middle East in 2014 (Channel 9 ‘Gold Coast News’, 16 August 2014).

The ACC’s Annual Report 2011–12 provides an overview of special operations targeting serious and organised crime, and reports that ‘production and supply of illicit drugs is the major activity of organised crime in Australia’ (2012, p. 89). It says ‘the illicit-drug market remains a key source of profit for serious and organised crime’ and illicit-drug activity significantly impacts on the Australian community with an estimated social cost of $8 billion per year (p. 10). The ACC’s Illicit Drug Data Report 2010–11 reported a record number of illicit drug seizures in 2010–11 totalling 69 595, the highest in a decade, and 84 738 associated arrests during the same period, the second highest in a decade (ACC 2012, p. 43). The ACC provided a snapshot of 13 highlights for the 2011–12 reporting period. Three involved major drug operations: one involved a Vietnamese syndicate dealing in illicit-drugs and money laundering where $4.3 million in cash and $6 million in drugs were seized, and two operations successfully targeted a Chinese syndicate involved in illicit drugs and money laundering where $32.6 million in drugs was seized, and a Chinese/Malay drug trafficking syndicate where $10.6 million worth of methylamphetamine and other drugs were seized (p. 17). The Vietnamese syndicate was the subject of a special investigation named Cytoskeleton. This was a joint agency operation with involvement of the Australian Federal Police, the Australian Customs and Border Protection Service, the South Australia Police and the Vietnamese Police (p. 64).
2.3.2 Making sense of the threat

Language capability is important to combating the illicit-drug trade and other forms of criminal activity. While it is generally known that law enforcement agencies use electronic surveillance to monitor perpetrators of serious and organised crime, it is hard to imagine that the operations described above would have been successful if not for the language support services provided by community interpreters/translators. Court transcripts of trials involving illicit-drug activity provide valuable data reflecting the quality of language capability relied upon to support law enforcement operations targeting serious and organised crime. Information and intelligence support is important to law enforcement operations targeting serious and organised crime. It is also important to the translation process to make sense of the contextual situation within which an utterance occurs.

Australia and the US have adopted principles of intelligence-led policing since the concept emerged during the 1990s (Peterson 2005; Ratcliffe 2003). Highlighting the profile of the crime–terror nexus, the US recognised the importance of intelligence-led policing following the events of 9/11, and quickly implemented a nation-wide program to enhance police intelligence operations related to homeland security and crime prevention. The US Attorney General introduced ‘A National Criminal Intelligence Sharing Plan’ in 2003 to improve information sharing between various law enforcement agencies and government departments. The Plan clearly established a definition of intelligence and described the intelligence process comprising collection, processing/collation, analysis, dissemination and re-evaluation. Included under the heading ‘Investigative (evidential) analysis’ are the functions of ‘conversation analysis’ and ‘telephone record analysis’ (Peterson 2005).

The diversity of Australia’s multilingual society presents challenges to investigative processes reliant upon the language services of community translators and interpreters (referred to in this thesis as LET). LET produce translations for evidentiary purposes within the constraints of the environment within which they work. This has an impact on the quality of translated transcripts used as evidence in court and is reflective of the language capability relied upon by law enforcement agencies. Analysis is an integral part of the intelligence process and is inherently complex. Parallels can be drawn between the mental process of analysing pieces of information for intelligence purposes and translating between languages. This makes
contextual information important to the translation process when supporting law enforcement operations and preparing translated transcripts obtained through telephone intercept or listening devices for evidentiary purposes.

2.4 Language in context

Preparation of evidence to prosecute serious and organised crime often includes transcribing LOTE from telephone intercept and/or listening device recordings directly into English transcripts. The translated transcripts are produced by NAATI accredited community translators and interpreters engaged by law enforcement agencies. The accreditation process does not test analysis skills or transcription proficiency.

The starting point for discussion about any analytical process—whether it is in relation to intelligence analysis or the analytical process undertaken by translators of LOTE, or a combination of both—must be to examine how we make sense of information we have before us. Within the context of intelligence-led policing and preparing translated transcripts for evidentiary purposes, this section reviews the literature relating to intelligence analysis and translation theories of equivalence. The psychology of intelligence analysis is briefly discussed leading into analytical processes undertaken by translators in pursuit of equivalence and notions of accuracy between different language systems. The importance of context to the transcription process, often determined through background information and intelligence support, is important in law enforcement and military contexts when monitoring communications of security interest. This section describes the difficulties LET face when preparing translated transcripts for evidentiary purposes where the concept of ‘accuracy’ is integral to the judicial process.

2.4.1 Analytical approaches and context

Introducing the psychology of intelligence analysis, Heuer claims thinking analytically is a skill that can be taught and improved upon through practical application. He adds that intelligence analysis is not learnt from classroom instruction, but is a skill that can be enhanced beyond natural ability (1999, p. 2). People view the world differently based on their experiences and how they attach meaning to what they perceive. These perceptions are influenced by such factors as experience, education, cultural values, role requirements, organisational norms and
specific attributes of the received information (p. 4). This point is emphasised by Gutt (1998) in relation to relevance theory and also by House when discussing the process of interpreting LOTE; ‘when readers understand a text, they bring to it their subjective understanding, their personal background and their contextual knowledge’ (2009, pp. 19–20). Heuer proposes that intelligence analysts approach their tasks with preconceived assumptions about the tasks they face (p. 5). It therefore follows that both translators and intelligence analysts are likely to approach their tasks framed within their individual understandings of reality. Hatim and Mason support this proposition: ‘the translator’s motivations are inextricably bound up with the sociocultural context in which the act of translating takes place’ (2013, p. 12). How entrenched human preconceptions become when we perceive the world based on personal experiences is relevant to both intelligence and translation processes.

The more people are exposed to patterns that consolidate their expectations the more entrenched those expectations become, even when they are made aware of data that may challenge those preconceptions. Heuer says ‘trying to be objective does not ensure accurate perception’ and that the context in which information is presented also influences aspects of perception using the example of a military intelligence analyst being tuned to perceive indicators of potential conflict (p. 9). Heuer also says ‘patterns of expectation tell analysts, subconsciously, what to look for, what is important, and how to interpret what is seen’, proposing that this forms a mind-set upon which perceptions of reality are predicated (p. 10). When discussing perception and implications for intelligence analysts, Heuer proposes that:

The circumstances under which accurate perception is most difficult are exactly the circumstances under which intelligence analysis is generally conducted—dealing with highly ambiguous situations on the basis of information that is processed incrementally under pressure for early judgement … is a recipe for inaccurate perception (p. 14).

Fragmented pieces of information and mental ruts can lead to misconceptions of reality. Another point Heuer makes in relation to intelligence analytical processes, which is also found in the translation process, is the tendency to apply conceptually driven analysis in the absence of specific data. Conceptually driven analysis is described as an approach applied in an environment where ‘there is little tested theory to inform the analyst concerning which of the myriad pieces of information
are most important and how they should be combined to arrive at probabilistic judgements’ (1999, p. 60). In this situation Heuer proposes that analysts rely on implicitly established ‘mental models’ where a conceptual framework is established within which they apply the data, and further states that ‘accuracy of judgement depends almost exclusively upon accuracy of the mental model, for there is little other basis for judgement’ (p. 60). This point is relevant to the situation confronted by interpreters/translators engaged by law enforcement agencies tasked to transcribe information derived from electronic surveillance product. The intercepted recordings are usually obtained through telephone intercept or listening device recordings where the translator relies upon fragmented pieces of information to determine context, and particularly in relation to code words. It may be the case that the translator will not have access to all available intelligence in order to help him/her better understand the context in which the conversation is taking place, who the participants are, or what intentions they may have. The translator in this situation is faced with much the same analytical and decision-making problems as does the intelligence analyst, and because both share the same mental machinery to process information—the human brain—both are prone to defaulting to mental ruts and making judgements made on accumulated knowledge and past experiences.

While members of a particular linguistic group might share the same language, and therefore potentially share common inferential abilities, they may differ widely in relation to how they perceive reality (Sperber & Wilson 1995). The authors state that humans are constrained by ‘species-specific cognitive abilities’ and that these abilities enable them to perceive the world based on experiences, teachings and views. However, beyond this, humans have a tendency to be highly idiosyncratic. Sperber and Wilson further add that ‘a mismatch between the context envisaged by the speaker and the one actually used by the hearer may result in misunderstanding’ (p. 16). Further, Heuer states that the nature of human perception and information processing makes it difficult for people to change established mental models, noting that information that proves consistent with established mind-sets is more easily perceived and processed which concretises existing beliefs. Noting that intelligence analysts receive little feedback in relation to the judgements they make, Heuer proposes that ‘an analyst’s personal experience may be a poor guide to revision of his or her mental model’ (1999, p. 61).
Context is the tie that binds utterance with understanding. The mutual knowledge hypothesis explained by Sperber and Wilson (1986, p. 15), and advocated by pragmatists, relates to context which is a psychological construct formed by the set of premises used by a hearer to interpret an utterance. Sperber and Wilson define context to include not only information about the physical or textual environment in the immediate term, but also future expectations, memories, religious beliefs and other aspects including the speaker’s mental state which are all taken into account in the process of interpretation. Van der Henst and Sperber outline the basic tenets of relevance theory (2012, p. 279). The authors describe relevance as ‘a property of inputs to cognitive processes’ comprising external inputs such as utterances and internal inputs such that may come from memories. An input is relevant to an individual when it is processed within the context of previously held assumptions and builds upon the cognitive understanding of what is already assumed (p. 279). The authors tested the cognitive principle of relevance with relational reasoning tasks and found that human cognition tends to be geared to maximisation of relevance and that the drawing of conclusions is largely guided by considerations of relevance (p. 293). Two basic ideas of relevance theory are:

- Linguistic expressions serve not to encode the speaker’s meaning but to indicate it. The speaker’s meaning is inferred from the linguistic meaning of the words and expressions used, together with the context.

- The speaker’s explicit and implicit meaning (her explications and implicatures) are inferred not sequentially but in parallel. The final overall interpretation of an utterance results from mutual adjustment of implicatures and explications guided by expectations of relevance (Noveck & Sperber 2012, p. 312).

Origgi and Sperber summarise this point clearly, stating that in order to understand an utterance

- humans do not just associate a linguistic meaning to the sound of a sentence:
- they also use information about the speech situation, the interlocutors, their past interactions, the background knowledge they share (2012, p. 331).

The authors usefully provide a breakdown of the two models discussed within linguistics: the ‘code’ model and the ‘inferential’ model. For the code model, the speaker encodes meaning into a sound structure paired to a language, and the hearer decodes the sound back into meaning. In contrast, the inferential model, grounded in
relevance theory, is where intended meaning is conveyed beyond semantic structure, which simply provides evidence of intended meaning (p. 332). Basically, inference in communication is a means of taking short cuts to coding and decoding intended meaning (Wilson & Sperber 2012, p. 38). The authors state that in inferential communication it is quite common for fragmented, ambiguous, or loose coding to sufficiently indicate intended meaning (p. 333).

Perceptions of reality are drawn from all available information during the analysis process. Where inference is a natural phenomenon of communication between humans, translators face unique challenges when tasked to transcribe communication conveyed in another language intended for a hearer other than the translator him/herself. In the situation of intercepted utterances from monitoring telephone calls or listening devices, the translator is unable to clarify ambiguity of meaning and is usually dependent upon background and/or intelligence information to help determine context. This situation is reflective of Heuer’s description of the Mosaic Theory of Analysis faced by intelligence analysts. Mosaic theory is described as a situation where ‘small pieces of information are collected that, when put together like a mosaic or jigsaw puzzle, eventually enable analysts to perceive a clear picture of reality’ (p. 62). This process is identical to that undertaken by the law enforcement translator who produces a version of reality in the form of a translation; a proposition of intended meaning. Translators, for the most part, deal with highly ambiguous texts that are often made available in an environment of uncertainty, and who are also under pressure for timely completion.

Context plays a primary role in the pragmatic dimension of translation (Gutt 1998, p. 49) and ‘the significance of information is always a joint function of the nature of the information and the context in which it is interpreted’ (Heuer 1999, p. 41).

A correct interpretation of what a speaker had intended is highly context-dependent due to the inferential nature of human communication (1999, p. 41). Gutt proposes that translations carried out for an audience from a cultural background other than that intended by the source text producer essentially quote the author ‘out of context’ (p. 49). This point is relevant where ‘objectively’ and ‘accurately’ translated transcripts of conversations are required for evidentiary purposes. Gutt raises the issue of optimal relevance, stating that successful communication requires
consistency and is always context-dependent, as the author of the source text has produced it as such in a way that is optimally relevant in the context assumed of the intended audience and not so in any other context (p. 51). The translator can only assume the context between author and intended recipient and arguably intervenes in the translation by bringing their own understanding of reality to the process.

This discussion provides an understanding of how individuals make sense of the world, and how understanding is negotiated through language within the constraints of contextual knowledge. Heuer’s perspective on the psychology of intelligence analysis is easily synthesised with the psychology and theory of translation, each sharing the fundamental dilemma of having to make sense of fragmented data in a realm of ambiguity. It will be shown in this thesis that the assumed accuracy, as determined by the court, of any translated transcript used for evidentiary purposes is never beyond reasonable doubt. This is based on the evidence drawn from the literature and the results of empirical data collected and analysed in this study. The notion of translation equivalence is a concept that has eluded translation theorists for centuries, yet it is an essential starting point when testing the notion of accuracy of translated transcripts used to support evidence in court.

### 2.4.2 Notions of translation equivalence

The importance of determining context in order to understand an utterance is particularly relevant to the translation process, as each of us perceives reality differently. Therefore, the question remains of how equivalence in translation can be achieved and measured in terms of accuracy. Understanding what theorists say about equivalence in translation is an important basis from which to approach the issues translators face when preparing translated transcripts for evidentiary purposes in court. Discussing the emergence of new disciplines and sub-disciplines associated with translation studies, Munday (2008, p. 199) points out that new theoretical models and technological developments are fuelling reassessment of what equivalence means in translation and how it might be achieved; a central issue in translation theory which has been the topic of scholarly debate for decades. This section addresses the concept of equivalence in translation. It explores the notion of equivalence and addresses the question of whether accuracy can be measured if equivalence between languages is acknowledged to be an elusive concept.
Translation theorists argue the conveyance of sense is imperative to the success of any translation. Contrasting ‘words’/‘language’ with ‘sense’, Viaggio emphasises that words and language are used as a conduit to convey intended meaning (sense) and claims that ‘translation, as any other kind of communication, still succeeds as long as sense is conveyed, while it fails completely and inescapably if it is not’ (Viaggio 1991, p. 37). The intention of language users may sometimes be different from the actual meaning of the words used, it has been proposed that there are utterances which have functions peculiar to the source language community and which have no communication purpose for the target audience (Kussmaul 1995). It is therefore incumbent upon the translator to act as a mediator between two ‘worlds’ to ensure that sense is correctly conveyed from source text to target text drawing on skill, experience, knowledge, creativity and advice from both source language and target language community members.

Translations are never a completely accurate reflection of an author’s intended meaning. Describing the translator as having an active role as a mediator bringing sense from one language group to another and in support of Kussmaul’s observations, Hatim and Mason state that ‘the source text itself is an end-product and again should be treated as evidence of a writer’s intended meaning rather than as the embodiment of the meaning itself’ (2013, p. 4). As the authors point out, the translation process is influenced by motivations of both the source text producer and the translator. Therefore, as any translation is produced subjectively, the authors suggest it stands to reason that assessment or evaluation of any translation must also be an interpretation, and complete objectivity will always be elusive for the translator because it is impossible to achieve; a view shared by Reiss (2014) and House (2009). Reiss qualifies this point by stating that ‘every criticism of a translation, whether positive or negative, must be defined explicitly and be verified by examples’ (2014, p. 4). This researcher agrees with this point of view, and it is argued that determining optimal approximations of meaning is a subjective and interpretive process, which is constrained by the number of competing proposed translations and the evaluator’s interpretation of context within which the communication occurs. In the case of translated transcripts used for evidentiary purposes, this study revealed that the Prosecution and the Defence generally agree before a trial begins that translated transcripts are accurate. Criticisms of sample translations used in this study were
defined explicitly and were verified with examples of alternative translations; an approach proposed by Reiss (2014).

Approximation of meaning and optimisation of equivalence is the most a translator can hope to achieve. Considering that equivalence is only achievable in a relative sense, Hatim and Mason propose that equivalence means the closest possible approximation to meaning assumed of a source text. The authors emphasise that all readings of texts can be interpreted differently and all translations will, to some degree, contain some element of the translator’s own perspective of reality. In addition, intentionality of the source text producer is assumed, and therefore only a subjective assessment of the meaning potential afforded the text being translated can be achieved. With this in mind, Hatim and Mason propose that it is the translator’s responsibility to ‘preserve, as much as possible, the range of possible responses; in other words, not to reduce the dynamic role of the reader’ (p. 11).

An approach to the translation process, where the translator purposely provides a degree of ambiguity that allows dynamic interpretation of the translated text for the target audience, is a problematic approach for translators preparing translated transcripts for evidentiary purposes. What Hatim and Mason propose in terms of meaning potential may be applicable and acceptable in a vast range of situations; however, this approach conflicts with the constraints applied to translation of transcripts used for evidentiary purposes where a determination of accuracy is integral to the judicial process. Further, it follows that the LET is a witness to a range of possible interpretations at the beginning of the translation process. The LET determines the degree of meaning potential afforded the target audience when preparing transcribed and translated utterances from LOTE which may or may not necessarily represent the intentions of the producer of the source text. In terms of equivalence and accuracy of translation, the best the LET can hope for is to convey the closest possible approximation of assumed intended meaning expressed by the author of the source text. This is an important point to consider when translated transcripts are accepted to be ‘accurate beyond reasonable doubt’ when presented as evidence in drug-related trials.

The translator produces the target text within a sociocultural context. Noting that the driving force behind producing the translation may be client-driven, market-driven or even translator-driven, Hatim and Mason propose that the sociocultural
context needs to be considered when evaluating translations, and because ‘the total re-creation of any language transaction is impossible, translators will always be subject to a conflict of interests as to what are their communicative priorities, a conflict which they resolve as best they can’ (p. 15). This leads to translation strategies adopted by translators who are often tormented by the tension between applying literal to free approaches to the translation process. Translating word-for-word is the extreme end of the ‘literal approach’, and the transference of sense using creative writing, a ‘free translation’ or ‘pragmatic approach’, is situated towards the opposite end of the translation spectrum.

Supporting the prospect of achieving equivalence at the word level, Newmark says:

Provided that equivalent effect is secured, the literal word-for-word translation is not only the best; it is the only valid method of translation. There is no excuse for unnecessary synonyms, let alone paraphrases, in any type of translation (1981, p. 39).

Newmark’s approach to narrowing the gap between remaining close to the original source text and taking a more target text approach when translating is demonstrated in his ‘communicative’ and ‘semantic’ translation model. The author suggests that the communicative approach will result in the target text reader expecting ‘a generous transfer of foreign elements into his own culture as well as his language where necessary’ while emphasising that the translator should adhere to the form and text of the source language. Semantic approaches, however, remain close to the source language culture, tending to sound ‘more awkward, more detailed, more concentrated, and pursues the thought-processes rather than the intention of the transmitter’ (1981, p. 39). Newmark further suggests that ‘semantic translation is always inferior to its original, since it involves loss of meaning, a communicative translation may be better, since it may gain in force and clarity of what it loses in semantic content’ and:

in communicative translation one has the right to improve the logic; to replace clumsy with elegant, or at least functional, syntactic structures; to remove obscurities; to eliminate repetition and tautology; to exclude the less likely interpretations of an ambiguity; to modify and clarify jargon (i.e. reduce loose generic terms to rather more concrete components), and to normalise bizarrenesses of idiolect, i.e. wayward uses of language (p. 42).
The communicative translation approach aims to invoke an effect on the reader ‘as close as possible to that obtained on the readers of the original’ and ‘semantic translation attempts to render, as closely as the semantic and syntactic structures of the second language allow, the exact contextual meaning of the original’ (p. 39).

Newmark’s support for literal word-for-word approaches to translation has attracted widespread criticism. Viaggio contests Newmark’s perspective of literal approaches to translation and disagrees that the semantic meaning of a sentence can be self-sufficient. Viaggio claims that Newmark disregards the important aspect of context and extra-linguistic circumstances that help make sense of an utterance. Further criticising Newmark’s comments on translation theory, Viaggio claims that Newmark ‘either blurs or altogether fails to see the difference between accuracy and adequacy’ (1991, p. 31). In relation to Newmark’s semantic and communicative model, Viaggio challenges the distinction Newmark makes between the two approaches, and says they are one in the same method with different choices being made during various stages of the translation. Viaggio emphasises that ‘interpreting the text is more than identifying words and establishing syntactic connections’ and adds that ‘sense is a dialectical, dynamic category that can only be determined by correlating the linguistic and the extra-linguistic, the dictionary and the encyclopaedia’ (1991, p. 31) Perhaps one of the most important points Viaggio makes is that:

Every single linguistic utterance can have countless senses. Sense is, basically, the result of the interaction between the semantic meaning of the utterance and the communication situation, which in turn is its only actualiser. Out of situation, and even within a linguistic context, any word, any clause, any sentence, any paragraph, and any speech may have a myriad of possible senses; in the specific situation – only one (which can include deliberate ambiguity). The translator ideally has to know all the relevant features of the situation unequivocally to make out sense (1991, p. 31).

Agreeing with Hatim and Mason (2013), Gutt (1998) and House (2009), Viaggio makes a compelling argument that extra-linguistic context is an imperative aspect of the communicative situation that the translator needs to infuse with the linguistic meaning of the source text when conveying sense into target text. Newmark’s model polarising semantic and communicative approaches without due appreciation of context within which the source text was produced, was not only a
simplistic way of describing translation theory, but was also ambiguously proposed. It is argued that Viaggio’s criticisms of Newmark’s model are justified. This raises the question of translation strategies used in translated transcripts, which seemingly lean toward a more literal word-for-word approach, closely resembling what Newmark calls ‘semantic translation’. It appears that the approach used in translated transcripts does not take into account that language is multifunctional, and literal orientated strategies significantly reduce the ‘meaning potential’ or ‘dynamic range’ of the source text. Halliday and Hasan emphasise the dynamic range of language:

Every sentence in a text is multifunctional; but not in such a way that you can point to one particular constituent or segment and say this segment has just this function. The meanings are woven together in a very dense fabric in such a way that, to understand them, we do not look separately at its different parts; rather, we look at the whole thing simultaneously from a number of different angles, each perspective contributing towards the total interpretation (Halliday & Hasan 1985, p. 23).

The importance of context is an integral part of translation and assumptions of meaning are subjective. Halliday further explains that context ‘…goes beyond what is said and what is written: it includes other non-verbal goings on – the total environment in which a text unfolds.’ (ibid, p. 5).

The belief held by many that direct equivalence between languages can be achieved is a widely held misconception. Halliday and Matthiessen carried out a comparative description of ideational semantics between English and Chinese. They found that while both language systems share all those properties peculiar to human languages, the “language universals” are far from being clearly defined. For this reason the examples the authors provide between the two languages are not supported by complex glossing conventions but the results of their analysis are explained in a narrative, noting that there are lexical units in Chinese that have no equivalent meaning in English (1999). However, in the search for equivalence by applying linguistic modeling, Halliday makes an important point. When talking of “equivalence value” in translation, he says that ‘value’ can be found at different ranks, strata, and metafunctions. Halliday also notes that equivalence in most highly valued at the lexicogramatical units in terms of rank, at semantics in terms of strata, and at the textual realms in metafunction. Acknowledging that equivalence at these levels is usually preferred, allows for greater lexical flexibility at the lower levels to
achieve the desired outcome. The author summarises his point by proposing that ‘A “good” translation is a text which is a translation (i.e. is equivalent) in respect of those linguistic features which are most valued in the given translation context’ (2001, p. 17).

Therefore, it can be said that equivalence in translation is dependant upon the subjectiveness of the features most valued for a given purpose in a given context.

Discussing principles of correspondence, Nida maintains that ‘there is no absolute correspondence between languages’ because the symbols used in each are never identical, including the way in which they are arranged in a phrase or sentence, and further states that interpretation by the translator is inevitable (Nida, 1964, p. 156). Noting that there are translators who translate very formally and semantically, Nida says explanatory notes and commentary usually accompany their translations. The differences in translations can be attributed to ‘(1) the nature of the message, (2) the purpose or purposes of the author and, by proxy, of the translator, and (3) the type of audience’ (1964, p. 156). Acknowledging that translations sometimes require closeness to ‘form’ and in others ‘content’ is of primary importance, Nida notes that it is usually the case that form is often sacrificed for the purposes of conveying sense. Resigned to there not being identical equivalents in translation, Nida proposes that it is necessary to find the closest possible equivalent (1964, p. 156).

Acknowledging that numerous translation theorists have decided realisation of equivalence in translation is an elusive concept Gallagher persists in proposing that equivalence in translation is achievable. This, he says, is upon the condition that equivalence is understood to mean that ‘in certain circumstances, words, phrases, sentences, or texts can be substituted with a minimum of inconvenience to the user’ (1993 p. 150). Gallagher’s argument that equivalence between languages can be achieved is ambiguous. He provides no explanation as to how ‘inconvenience’ in this context is defined or measured, and therefore leaves us with the question of what is acceptable in terms of equivalence and what is not. Gallagher does make some important and convincing concessions that are so fundamental to the translation process that they seem to undermine any conceivable notion of equivalence being achievable in translation. He says that while equivalence may be established in the field of contrastive linguistics when comparing separate language systems, in translation studies, equivalence must be established at the text level where ‘the
purpose is to impart information, ideas or feelings to members of a foreign language community’ (p. 150). He warns that translators who think they have found equivalence at the system level may find that any notion of equivalence found there might be less acceptable at the text level. Emphasising this point, Gallagher says ‘decisions made at the macrostructural level must take precedence over those at the microstructural levels’ and that ‘failure to adhere to this principle will in all likelihood result in botched work’ (p. 153). This latter point emphasises the importance of applying context to the translation. This thesis will show that courts rely upon notions of accuracy. Extracts of translated transcripts reveal that priority is placed on conveying the meaning of utterances at ‘microstructural levels’ of text, and lesser attention is placed on possible meanings conveyed at the ‘macrostructural level’. This has resulted in significant errors of translation.

In summary, equivalence takes on a variety of meanings depending upon how the translation process is viewed, but it is generally agreed by translation theorists that equivalence is an elusive concept. Optimal approximation may be argued as the preferred method to arrive at the best possible translation that can be achieved for a particular objective, as it is argued that total equivalence in translation is unachievable (Darwish 2008, p. 125). However, the concept of optimal approximation is also dependent upon the ability and perspective of the individual translator, and the choices he/she makes in pursuit of what he/she considers to be optimally approximated. It is argued that optimal approximation is dependent upon, and relative to, the ability and judgement of the translator, and therefore the label of ‘optimal approximation’ can be no more a credible descriptor than that of the ambiguous terms of ‘equivalence’ and ‘accuracy’ in translation. Optimal approximation allows for a variety of acceptable translations of the same source text, and therefore broadening notions and degrees of accuracy and equivalence. These are important points to consider when evaluating translated transcripts used as evidence in court, especially when they are claimed to be ‘accurate beyond reasonable doubt’. It is not argued here that perceptions of accuracy or equivalence are misguided. It is argued that the terms are subjective descriptors interpreted differently by individuals or groups based on their perception of what is acceptable for a given purpose.
2.5 Electronic surveillance evidence

Conversations in LOTE alleged to be related to serious and organised crime are frequently recorded by law enforcement agencies and transcribed into English for operational purposes and for use as evidence in court. The means by which these conversations are intercepted is increasingly through monitoring of telephone calls and deployment of covertly placed listening devices. A barrister participating in this study estimated that 75 per cent of all evidence presented in drug-related trials is presented in the form of telephone intercept and/or listening device recordings. Law enforcement agencies engage NAATI-accredited community interpreters/translators to transcribe conversations without applying analysis to avoid jeopardising the integrity of the evidence. This presents a dilemma for the translator in maintaining faithfulness to the source text while at the same time attempting to convey what is assumed to be the intended meaning in the translated transcript. The purpose of providing the court with translated transcripts is to help the jury understand the evidence presented, being the sounds recorded in the audio files.

Ambiguity of alleged meaning of intercepted utterances is contested in courts where alleged perpetrators of serious and organised crime have used veiled speech. The legal systems in Australia and the US call upon police officers to give expert testimony about the alleged use of jargon and code words by the accused in LOTE. Expert witnesses are often called to explain the meaning of words and phrases as they appear in translated transcripts. Sometimes, witnesses are also called to explain the content of recorded conversations when they were a party or witness to the discourse. This section reviews the literature that describes systemic deficiencies in the justice system relating to the way Crown prosecutors proffer evidence, which in the case of drug-related crime frequently includes translated transcripts of telephone calls and listening device recordings containing alleged code words and jargon.

2.5.1 Translated transcripts for evidentiary purposes

Prosecuting serious and organised crime through the judicial system is an integral part of the national security paradigm. How evidence in LOTE is presented and understood by the courts provides an avenue to investigate Australia’s language capability upon which law enforcement agencies rely. Review of the literature reveals a gap in knowledge relating to the quality of translated transcripts presented for evidentiary purposes. This research analyses translated transcripts including the
translation and interpretation of drug-related code words and jargon in an Australian context for evidentiary purposes. The literature of most relevance addresses problems experienced in US courts but is also relevant in the Australian context. Moreover, the available literature focuses more on legal argument relating to suitability of police officers called upon as expert witnesses to explain the meaning of code words and jargon. This researcher found no literature containing empirically based research relating to the accuracy, or perceived accuracy, of translated drug-related code words and jargon from LOTE used as evidence in court. The role played by police officers called to proffer testimony as expert witnesses in the translation of code words and jargon is significant to this enquiry. Police officers often provide interpretations of translated transcripts for the purposes of helping the jury understand the alleged context in which the utterances in LOTE took place. In most cases, police officers proffering evidence relating to interpretation of alleged code words are not speakers of the LOTE from which the translated transcripts have been produced.

Discussing strategies for challenging police drug jargon testimony, Moreno (2006) reports that police officers in the US are routinely called upon to testify on issues relating to the modus operandi of drug dealers and how to translate drug jargon. Police officers provide this information in the capacity of expert and non-expert witnesses in accordance with Federal Rule of Evidence 702 (Fed. R. Evid. 702a), which permits expert testimony if ‘specialised knowledge will help the trier of fact to understand the evidence or to determine a fact in issue’. Moreno says police officers are routinely called to testify due to three basic assumptions:

- Drug dealers regularly use drug jargon.
- Jurors cannot understand drug jargon without expert assistance.
- Police officers can identify and accurately translate drug jargon.

Judges have shown a reluctance to challenge the expertise of police officers called upon as witnesses to testify as to the meaning of drug-related code words and jargon (Moreno 2006). In United States v. Boissoneault 926 F.2d 230, 23 (2d Cir.1991) the court of appeal held that ‘experienced narcotics agents may explain the use and meaning of codes and jargon developed by drug dealers to camouflage their activities’. The calling of police witnesses to testify as experts translating drug-related code words and jargon has been challenged.
The credibility of evidence proffered by police officers when interpreting the meaning of drug-related code words is often questionable. Moreno (2006) argues that there is considerable risk of confusion arising in the minds of jurors when the police investigator and the expert witness are one in the same person, as jurors may find it difficult to determine whether the testimony is a reflection of the witness’s general experience or that of information they have obtained through involvement with the investigation. The court usually accepts evidence presented by police officers as expert witnesses as credible and accurate (2006).

Potential systemic biases in the judicial system have been studied, but rarely in the context of translated transcripts. Nunn (2010) studied the potential for systemic biases that adversely affect the objectiveness of transcripts used for evidentiary purposes, emphasising that this area is rarely studied by social scientists. Nunn uses primary data to show how transcripts can be skewed and distorted to add weight to the evidence presented by the Prosecution to obtain a conviction in criminal trials. In doing so, Nunn states that approximately 81 per cent of ‘wiretaps’, in a US context, are used to support efforts to combat the illicit-drug trade, and that police bias is inherent within the transcription process.

Fishman (2006) addressed problems of accuracy associated with translated transcripts from LOTE used for evidentiary purposes. He clearly describes the types of problems encountered in US courts relating to recordings, transcripts, and translations presented as evidence. Fishman notes that even when recordings played to the jury are in English, nuances peculiar to region, idioms, jargon or code may cause considerable difficulty for a jury to hear or understand (2006). The principles of law Fishman cited when stating his argument are relevant to evidence laws used in an Australian context where direct parallels can be drawn between what is admissible and what is not according to both US and Australian legal frameworks. Importantly, Fishman discusses the importance of accuracy in transcripts presented in English, in LOTE or in a combination of both. He discusses what methodological approaches translators should use and how accuracy should be determined, but does not elaborate on translation strategies to negotiate the conveyance of sense while preserving evidentiary value.

Emphasising the effectiveness of recorded conversations as evidence in court, the jury is often provided with a written translated transcript to help them understand
the utterances contained in recordings, particularly where the parties to the conversation have used jargon, slang or code words translated from LOTE (Fishman 2006). Recordings in LOTE are of no use as evidence to the jury unless they are accompanied by an English translation. In this case, Fishman states that the element of objectivity is significantly reduced when a LOTE has been translated into English, as the process of translating and interpreting is ‘much more an art than a science, let alone a mechanical process’ (p. 476). This is a view Laster and Taylor (1995) and Nakane (2009) share.

The process of transcribing recordings in LOTE that contain code words and/or jargon obtained through telephone intercept or listening devices is complex. It requires the translator to commit to subjective notions of translation accuracy to ensure the evidentiary value of utterances is not lost. However, a clear weakness in the integrity of the judicial process is when police officers proffer expert witness testimony on code words and jargon that have been translated from LOTE. While a police officer with relevant experience, training and knowledge may be accepted as an expert on drug-related code words in his/her native language, their testimony is completely reliant upon the alleged accuracy of the translation of alleged code words or jargon, as contained in the translated transcript produced by another ‘expert witness’, the LET. The results of this research show that the alleged accuracy of translated transcripts is rarely challenged before trials commence due to resource limitations and administrative constraints, increasing the potential for unfair trial decisions. Preparation of translated transcripts for evidentiary purposes falls within the emerging discipline of ‘forensic translation’.

2.5.2 Forensic translation

Few scholarly publications relate to production of translated transcripts for evidentiary purposes. Darwish has written extensively on this topic proposing that the practice falls within the emerging discipline of forensic translation (2012). According to Darwish, ‘forensic translation’ concerns itself with ‘documents and recordings submitted as evidence in the courts of law’ (2012, p. 41) and ‘the objective of forensic translation analysis is to establish what the information content of a document purports to say’ (p. 97). Australia does not have an established association of legal interpreters and translators to consult in relation to production and use of translated transcripts. However, in the US, NAJIT released a position
paper providing ‘general guidelines and minimum requirements for transcript translation in any legal setting’ (NAJIT 2009). Viewpoints from which Darwish and NAJIT approach preparation of translated transcripts are discussed in this section.

Translators as mediators of communication make critical decisions when preparing translated transcripts for evidentiary purposes. Darwish categorises two main areas of translator influence: intervention and interference. ‘Translatorial intervention’ is exercised when the translator may inadvertently or intentionally compromise the integrity and intentions of the original text to convey the closest form of equivalence; ‘translatorial interference’ is an act ‘that forces the translation outside the parameters of the original text’ and which he says is unacceptable practice (p. 81). The translator has to decide whether to make explicit the inter-subjectivity of the shared knowledge between the source text author and the intended recipient (p. 105). This poses a significant problem. Making explicit the implicit conveyed in source text is likely to require substantial intervention, if not interference during translation, which is likely to significantly detract from the evidentiary value of the final product. As preservation of evidentiary value is the LET’s primary goal, conveying the semantic content of the source text is most likely to take priority over applying translation strategies of intervention to convey sense.

In the absence of a systematic approach to translation, the translated product is likely to be deficient in reliability and validity, and will be prone to unjustified interference. He states that this is bound to result in ‘misinterpretation, mistranslation and distranslation’ (Darwish 2012, p. 146). The author claims that ‘specialised knowledge is essential for producing reliable translation-mediated evidentiary documents’ and that these documents must preserve the information context and text parameters of the original (p. 46–48). Discussing the tension between accuracy and naturalness and the transference of collocations, Baker makes the point that in most cases transference of exact meaning is unavoidably lost due to significant differences between language systems. She says the degree to which the meaning differs depends upon the context in which the change occurs. She further states:

Accuracy is no doubt an important aim in translation, but it is also important to bear in mind that the use of common target-language patterns which are familiar to the target reader plays an important role in keeping the communication channels open (Baker 2011, p. 60–61).
In contrast with Baker’s position on accuracy versus naturalness, Darwish argues that within the context of forensic translation, it is important that ‘evidentiary clues are not sacrificed for the sake of naturalness’ (2012, p. 75). Darwish concedes that while external and internal constraints act against the conveyance of meaning into the other language in totality, trade-offs are to be expected, but warns that meaning should not be distorted or lost through unjustifiable translatorial intervention or interference.

Without a proper approach to the translation process, evidence may be intentionally or inadvertently compromised. Producing translated transcripts from telephone intercepts and listening devices requires specialised skills training and knowledge, yet Darwish claims that ‘in most situations’ evidentiary documentation is translated by translators who have significant biases or are ‘simply incompetent’. He states that this inevitably affects forensic analysis and contributes to miscarriages of justice (2012, p. 19). This situation is not peculiar to Australian courts. NAJIT notes that in a US context ‘transcript translation remains an area that is not uniformly regulated in courts nationwide’ (NAJIT 2009, p. 6).

The LET is required to bring across the closest possible equivalent meaning at word and sentence level while also conveying sense. NAJIT proposes that the translation should be accurate and complete, be natural and idiomatic, where appropriate, and faithfully reflect the register, style, and tone of the original (p. 6).

NAJIT does not define accuracy; it is a term that remains ambiguous when applying strategies to the translation process and evaluating translated product. The approach Darwish proposed takes the most direct route from the source language to the target language while also conveying the communicative aspect intended by the source text author. Evaluation of the source text by the translator must commence with an analysis of the source text and an interpretation of what it means within the assessed context that the source text is produced. Also taken into account, is the source text author’s assumed intended meaning, as understood by the translator. Therefore, the translator undertakes a process of analysis and decision-making at first appraisal of the text to be translated as a means of forming a contextual framework within which the source text may be realised; hence, the importance of background and intelligence information supporting the translation process. NAJIT acknowledges that background information can assist the translator in ‘comprehending distorted
sound’ or clarifying ‘ambiguous utterances’ but emphasises that the final translation should contain ‘only what he or she actually hears in the source recording’ (NAJIT 2009, p. 6). However, these approaches do not resolve the tension between documenting what was actually heard and conveying the communicative function of the intercepted utterances.

It is inevitable that the translator will at some point need to interfere during the translation process. It is important that translators declare areas where they have interfered in their attempt to convey sense. Darwish states that it is the translator’s responsibility to convey the intended message contained in the source language into the target language without interference, and where ‘trade-offs’ are unavoidable, those elements should be made explicit as part of the process of forensic translation (2012, p. 76). House argues that ‘a translated text can never be identical to its original, it can only be equivalent to it in certain aspects’ (House 2009, p. 42). This causes a problem for quality control of translated transcripts where it is possible to arrive at different conclusions when evaluating translations for accuracy, equivalence and objectivity.

Errors in translated transcripts that go undetected due to inadequate quality control can undermine the integrity of the judicial system. The quality control of translated evidentiary documents is a conundrum exacerbated by the very nature of how law is constructed, enforced and applied. Tiersma summarises the importance of translations presented as evidence: ‘law—by definition—comes into being through language’ (2000, p. 1). It is therefore imperative that the translator of texts used for evidentiary purposes makes the right choices when transferring meaning from the source text to the target text. The approaches the translator takes will determine whether aspects of internal consistency, linguistic integrity and ultimately translation integrity are maintained.

The translator forms a mental framework based on a personally held perception of the world. From this perception, the translator attempts to reproduce the perceived intended source text author’s communicative meaning in the other language within the constraints of maintaining evidentiary value. Decision-making processes within constraints undertaken by translators, as described by Darwish, can be compared with those decision-making processes Heuer (1999) discussed in relation to intelligence analysis processes. Both seek optimality in assessments and predictions
are made in a realm of uncertainty. Contextual information is extremely important to translation. Therefore, it follows that accuracy of a translation can only be agreed upon by those who share a mutually agreed perspective of the world with that of the translator. For this reason, accuracy is not defined in this thesis: to do so would be recklessly prescriptive, result in a narrow approach applied to the research and potentially risk distorting the views expressed by study participants.

It is left to the jury to decide whether translated transcripts presented in court are accurate translations of what the evidence in the form of audio recordings is purported to contain (Federal Evidence Review 2014, p. 2). This study will show that the Prosecution and the Defence are instructed to resolve areas of dispute to reach agreement that the translated transcripts are accurate before a trial commences, leaving only the meaning of the utterances contained in the transcripts to be resolved through the adversarial process. The jury is provided with the translated transcripts and will hear arguments from the Prosecution and the Defence in relation to what those utterances are alleged to mean. Ultimately, it is up to the jury to determine the accuracy of the evidence presented.

2.5.3 Translated transcripts as primary data

A recent academic paper relating to serious and organised crime in Australia was produced having used transcripts from telephone interception and listening device recordings as primary data. The transcripts were presented as evidence in a terrorism-related trial heard in the Supreme Court in Melbourne, Australia. The paper, ‘If they know who put the sugar it means they know everything: understanding terrorist activity using Operation Pendennis wiretap (listening device and telephone intercept) transcripts’, proposed to:

- generate new understandings on terrorism studies methodological approaches by analysing events recorded through electronic bugging device and wiretap materials – specifically the transcripts derived from listening device and telephone intercept equipment recordings (Lentini 2011, p. 1).

The research, funded through an Australian Research Council linkage grant, aimed to fill a knowledge gap relating to using transcripts from telephone interception and listening device recordings to inform ‘how terrorists think’ (2013). Schuurman and Eijkman express the importance of access to primary data to support
terrorism studies, noting that research into terrorism contributes to government policies and decisions in relation to preventing and countering terrorism (2013).

There is evidence that the translated transcripts used to support the data Lentini used in his research contained utterances translated from Arabic. An article published by The Age on 17 September 2008 discussing Operation Pendennis stated:

As well as straining to understand the sometimes fractured English of Abdul Nacer Benbrika – who often dropped his voice to a murmur when uttering the murderous phrases that would later help to convict him – police had to get translations of the many Arabic words and Islamic blessings sprinkled through the men’s exchanges (The Age, viewed 5 March 2014).

Lentini’s research highlights the importance of the quality, reliability and veracity of translated transcripts used for evidentiary purposes. Lum et al. call for researchers to provide policy makers with outcome evaluation based on rigorous research, but at the same time call upon decision makers to make more primary data available for research purposes (2006). This research revealed that translated transcripts frequently contain significant errors, and therefore highlights significant risks in assuming the veracity of translated transcripts from telephone interception and listening device recordings presented in court and used as primary data for research purposes. While some may describe the legal standards applied to translated transcripts when entered into a brief of evidence as rigorous, they are not beyond doubt in terms of translation reliability and alleged accuracy. Therefore, the accuracy of translated transcripts should not be assumed based on perceptions about the integrity of legal and law enforcement administrative processes.

2.6 Summary

The nexus between national security and serious and organised crime is now established, clearly placing law enforcement responsibilities of prosecuting serious drug offences on the national security agenda. Australia’s language capacity relied upon to prosecute serious and organised crime is directly related to meeting national security objectives. However, the broadened concepts of national security are supported by inadequate constructs of language capability through the NAATI and Defence Force School of Languages pathways. Translated transcripts from electronic surveillance are used as evidence in drug-related trials involving translation of alleged code words and jargon. These transcripts provide an opportunity to evaluate
the language capability supporting law enforcement operations targeting areas of serious and organised crime, including terrorism. Even though a broadened approach to security is described in Australia’s national security policies, Australia’s language capability has not been explicitly identified as a necessary resource that supports efforts to support national security objectives.

From the literature it is known that non-conventional threats from non-state actors threaten Australia’s security interests. It is also known that law enforcement now plays an increasingly important role in maintaining national security by combating serious and organised crime, and that law enforcement agencies have become increasingly reliant upon community translators and interpreters to provide languages services in this area. What has yet to be investigated is the level of language competency available to law enforcement agencies to combat serious and organised crime, and how any identified deficiencies impact on Australia’s national security. This gap in the literature is framed by an expanded security agenda, and evaluation of language capability supporting law enforcement agencies is made possible by investigating the veracity of translated transcripts and the way they are prepared and used for evidentiary purposes. The gap in knowledge will be filled by answering the following research questions:

1. What evidence points to systemic deficiencies in language capability available to combat illicit-drug activity?
2. How do identified deficiencies affect the judicial process?
3. What causal factors contribute to these deficiencies?
4. What impact do any identified deficiencies have on meeting national security objectives in an Australian context?
Chapter 3: Methodology and design

3.1 Introduction

The approach applied to this investigation was seen through the lens of a broadened national security agenda requiring a range of policy measures to protect and maintain Australia’s interests. The literature review discussed viewpoints arguing that the broadened security agenda is addressed and supported by a Cold War construct of compartmentalised organisational structures (Connery 2013; Ungerer 2009). This is reflected in the divisive framework supporting the sum of Australia’s language capability and in the absence of an overarching national security languages policy. The two primary security sectors that rely upon language capability to meet national security objectives are law enforcement and military. Each sector relies on language capability provided through vastly different pathways to meet their organisational objectives.

Data from translated transcripts reflecting language capability relating to electronic surveillance activities undertaken by the military sector are highly classified and were not accessed for the purposes of this research. However, court observation and court transcripts provide public access to empirical data that reflect the language capability upon which law enforcement agencies rely to combat serious and organised crime. It was possible to obtain information from key stakeholders within the law enforcement and military sectors through questionnaires and interviews relating to translating LOTE from electronic surveillance operations associated with national security objectives.

Applying socio-linguistic approaches to this research, it will be shown that ‘translation studies’ is inherently interdisciplinary subsuming theories from other disciplines. This is reflected in the multifarious approach to the research design that guided this study, which is framed within a contemporary view of national security. To bring context to how language capability is situated across the broadened spectrum of national security, the relationship between security and domestic affairs needs to be investigated recognising that threats to security can come from organised and transnational crime (Snyder 2008).
This chapter describes the methodological approaches and research design model used to answer the research questions: What evidence points to deficiencies in language capability supporting efforts to combat serious and organised crime? What are the implications for Australia’s national security? Sub-questions were:

1. What evidence points to systemic deficiencies in language capability available to combat illicit-drug activity?
2. How do identified deficiencies affect the judicial process?
3. What causal factors contribute to these deficiencies?

The questions were answered by collecting data relating to areas relevant to producing and using translated transcripts as evidence in trials with a particular focus on translating alleged code words used in illicit-drug related activity. The answers to sub-questions 1 to 3 lead to answering sub-question 4:

4. What impact do any identified deficiencies have on meeting national security objectives in an Australian context?

3.2 Methodology

3.2.1 Researching the legal environment

Researching the legal environment brings with it some demanding aspects in relation to transcending insider and outsider labels. Outsider labels are defined as being attributed to those who examine a group to which they do not belong (Flynn 2011). Flynn examined what it takes to break into the legal culture of the Victorian Office of Public Prosecutions, reporting on the necessity of building trust with groups to which the researcher does not belong, emphasising the need to ‘temporarily integrate within the community’ being researched (p. 47). Using semi-structured interviews to collect information about areas such as experience, opinions, values, aspirations, attitudes and feelings, Flynn reported that this methodology enabled a comparative analysis of responses. The methodology Flynn applied was taken into account during the design of this research, in addition to the points he made about insider and outsider labels. This was particularly relevant when engaging with participants from the small and specialised community of court interpreters. Julian (2011) proposes that issues may arise where minority groups feel misunderstood by researchers from mainstream culture, stating that these issues need to be overcome so as not to jeopardise the validity and reliability of the data collected (2011, p. 118).
Court interpreters are well positioned to comment on the quality of translated transcripts used for evidentiary purposes in court, as they are often required to interpret extracts of translated transcripts during the conduct of trials involving serious and organised crime. This researcher worked extensively with court interpreters in Victoria during this study and earned a high level of trust. Vietnamese court interpreters consulted during the conduct of this research revealed that they often play an important role helping the court make sense of translated transcripts presented as evidence in court. An understanding of the role court interpreters perform is important to comprehending how translated transcripts and alleged code words are made sense of in a court environment. Australian court interpreters and law enforcement translators are drawn from the pool of community interpreters and translators accredited by NAATI. The areas of transcription from LOTE into English and court interpreting are not recognised as specialist areas under the NAATI framework of national accreditation.

Issues affecting court interpreters have been researched from a variety of perspectives. Hale (2011) produced a report, sponsored by the Australian Institute of Judicial Administration Incorporated, titled *Interpreter policies, practices and protocols in Australian courts and tribunals: a national survey* in which she found no consistent practices around Australia in relation to use of interpreting services and highlighted problems with the current NAATI-administered system of interpreter accreditation (p. xi-xii). NAATI was reviewing national accreditation procedures at the time of writing this thesis. Laster and Taylor also comment on the skills required of Australian legal interpreters and report significant deficiencies in specialised training in this area (1994).

While in theory court interpreters subscribe to the concept of being a ‘conduit’, they constantly exercise discretion in their choice to perform the role of communications facilitator. The mere presence of an interpreter in court adds another tier of complexity to the legal process, and linguistic researchers have found that non-native speakers of English have difficulty in maintaining both the form and content of replies and make a poor impression in court (Laster & Taylor 1994). When commenting on literalism and linguistics, Laster and Taylor note that ‘linguistic complexity ... means that accuracy is not synonymous with literalism’ (1994, p. 115). However, transcripts of drug-related crime evidence from
telecommunications interception are invariably oriented to literal translation, which will be demonstrated in the analysis of the data in Chapter 6. Yet if command over language is the key to success in the courtroom (Laster & Taylor 1994, p. 163), and court interpreters negotiate the interpreting process to facilitate effective communication, it stands to reason that counsels’ questions quoting extracts of translated transcripts will also undergo some degree of interpretation.

The role of the court interpreter has been described as a ‘conduit’, or simply a ‘machine’ that translates words (Laster & Taylor 1995; Nakane 2009). Laster and Taylor argue that the term ‘communication facilitator’ more accurately describes the interpreting function and states that ‘the conduit model of legal interpreting was developed as a technical solution to avoid the enormous evidentiary problems associated with the exclusion of evidence as hearsay’ (1995, p. 10). Nakane takes the argument further, and provides a case study of English–Japanese police interpreting that concludes that interpreters are ‘... more than “sound boxes” or “conduits” and cannot be simply regarded as invisible’ (2009, p. 15). Jacobsen also found that court interpreters did not simply transfer information literally from one language to another, but participated actively in the courtroom to realise successful interaction. Jacobsen concluded that court interpreters were preoccupied with matching speakers’ utterances to aspects of context to determine speaker meaning. Jacobsen’s research involved collection of data in courtrooms located in Copenhagen, Denmark, and was carried out without obstructing proceedings or violating the rights of participants and without hindering the interpreting process (2004).

Davidson observed interpreters acting as institutional gatekeepers in a case study conducted on hospital interpreters. He found that interpreters assumed the role of institutional gatekeeper by selective non-reporting of patient’s discourse for a variety of reasons. Using qualitative and quantitative linguistic data, Davidson found that interpreters were inclined to interpret selectively to meet organisational requirements of keeping the interviews ‘on-track’ (2000, p. 385). Like interpreters in Davidson’s study who were paid by the hospital, law enforcement translators and court interpreters rely on law enforcement and legal institutions as a primary means of income, increasing the potential for manifestation of systemic biases and errors to occur during translation and interpreting activities.
3.2.2 An interdisciplinary approach

This thesis necessarily adopts an interdisciplinary approach to address the research questions. Translation studies, as an academic discipline, subsumes development of theory and the phenomenon of translation. It is also interdisciplinary by nature spanning across a range of branches including linguistics, comparative literature, communication studies, philosophy and different types of cultural studies (Munday 2008). Hickey says translation ‘seems to involve semiotic, linguistic, textual, lexical, social, sociological, cultural and psychological aspects or elements’ (1998). This research brings together common elements found in security studies and the emerging field of forensic translation. It does not delve into abstract notions of translation theory, but contributes to what Gentzler observes to be the evolving shift in translation investigation from the abstract to the specific, and in doing so, reveals all the imperfections inherent in the surface of texts rather than concepts of underlying hypothetical forms (1993, p. 4).

Translated transcripts of electronic surveillance product used as evidence in court are produced within a social context by individuals who reside and operate within a social system, and as Wolf explains:

On the one hand, the act of translating, in all its various stages, is undeniably carried out by individuals who belong to a social system; on the other, the translation phenomenon is inevitably implicated in social institutions, which greatly determine the selection, production and distribution of translation and, as a result, the strategies adopted in the translation itself (2007, p. 1).

Wolf draws on the concept of interdisciplinarity to discuss constructing a sociology of translation studies within a broader context, and proposes that:

in the humanities, interdisciplinarity projects are an especially important contribution to the rise and subsequent establishment of ‘turns’, which question both existing paradigms and allegedly definitive certainties, and additionally offer innovative potential for productive new research areas and methodologies (p. 2).

This research seeks to investigate the multiple facets of the social context that impact on the translation process and use of translated transcripts in court to evaluate the language capability relied upon to meet non-traditional security objectives. It will be shown that acceptance of translated transcripts as ‘accurate beyond reasonable
doubt’ before criminal trials begin is an extension of a widely held misconception of language capability and translation veracity. This undermines the integrity of the judicial process and reflects poorly on Australia’s language capability generally.

The methods used in this research are multifarious. Popper’s view that philosophers are as free as anyone else to employ any method they wish in the pursuit of truth is a philosophical perspective underpinning the approach taken to this research (2002, p. xix). This perspective is shared in the critical discourse analysis approach proposed by Weiss and Wodak who state that critical discourse analysis has never been descriptive when it comes to applying specific theory or methodology to research (2003). Choultaraki and Fairclough share this view; they see critical discourse analysis ‘bringing a variety of theories into dialogue, especially social theories on the one hand and linguistic theories on the other’ (1999, p. 16ff).

The triangulation of data is a strength of the research design used in this study. Reflected in the methodological approach taken to this research is Weiss and Wodak’s suggestion that the principle of triangulation will help the critical discourse analyst remain focused on analysing rather than politicising (2003, p. 21). The discourse-historical approach which aims to embrace inter-disciplinarity, multi-methodological approaches, and a diverse variety of empirical data and background information can help this research transcend from analysis of translated transcripts to explore the potential or actual impact the findings have on the historical, political, sociological and/or psychological dimension (p. 22). A dialectical relationship exists between discourse in the courtroom directly relating to translated transcripts, and to what Weiss and Wodak call ‘the fields of specific action’ which, within the context of this research, are represented by law enforcement institutions, the courts and government policy on security. This relationship can be effectively explored and analysed by applying the concept of ‘context’ supporting a triangulated approach across the following levels:

1. The immediate, language or text internal co-text

2. The intertextual and interdiscursive relationship between utterances, texts, genres and discourses

3. The extralinguistic social/sociological variables and institutional frames of a specific ‘context of situation’ (middle-range theories)
4. The broader socio-political and historical contexts, which the discursive practices are embedded in and related to (2003, p. 22).

The authors emphasise that critical discourse analysis representatives are faced with having to reveal gaps between discourse and context, stating that establishing relevance between the two may be realised through interdisciplinary approaches. Furthermore, Wodak supports the view that without taking the broader context into account, micro level analysis is inclined to take a narrow perspective, which does not factor in the sociocultural influences that shape discourse. Wodak proposes there is a tendency for analyses at the micro and macro levels to remain isolated where micro studies may fail to ‘contextualise’ the impact that broader discourse has on actors, and that macro level studies may be deficient in explaining the effect they have on micro level processes (2009, p. 53–54). This point supports the scope and themes that bind this thesis at the macro and micro levels. Without clearly describing the context within which language capability is relied upon at a macro level, micro level analysis of discourse and processes are likely to limit the relevance of this study to environment specific applications. The principles of critical discourse analysis can help explain how establishment of particular norms concerning use of language can sustain real world problems (Coffin et al. 2010, p. 95). It is not the objective of the methodology applied in this thesis to adhere to rigorous analytical methods such as Halliday’s Systemic Functional Grammar or Fairclough’s adaptation of the model as described by Widdowson (2010, pp. 163–78). However, it is acknowledged that these methods can be used to critically analyse the relationship between the semantic and pragmatic functions of selected texts.

The hypothetico-deductive reasoning or ‘scientific method’ uses both inductive and deductive reasoning, seeing a fluid approach taken between the two approaches. This method identifies a problem and a hypothesis is formed inductively through observations from which implications are drawn. Practical or theoretical testing of the hypothesis then takes place to either refine or reject it (Walliman 2011). The research design of four tiers of differing collection methods can be viewed as having adopted principles of the scientific method. The first tier of the research design involves observation of court cases from which resultant data helped frame the practical application of further data collection methods (questionnaires and interviews) based on deductive reasoning. Popper states that self-criticism of our
proposed problems should take precedence over trying to defend our positions, as others will inevitably provide criticism if we fail to acknowledge any shortcomings in our work. Popper further proposes that:

criticism will be fruitful only if we state our problem as clearly as we can and put our solution in a sufficiently definite form—a form which can be critically discussed (p. xix).

Heeding Popper’s advice, the third and fourth tiers of data collection in the research design use court transcripts to validate findings from the first two tiers. In an attempt to apply the principles of rational thought and philosophy proposed by Popper (p. xxvi), this thesis endeavours to contribute to scientific knowledge through interpretation of common-sense knowledge, as explained by Schultz as being the process by which all scientific and logical concepts originate (1953). It is not a primary objective of this thesis to investigate or analyse the interpretive dimension of discourse used in the production and/or use of translated electronic surveillance transcripts using Foucauldian approaches. However, it is acknowledged that co-existence is possible between truth and ideology, communication and distortion (Olssen 2010).

In summary, an interdisciplinary, non-prescriptive approach was applied to the research design that was created and mapped with the aim of optimising access to relevant data to meet the research objectives.

3.3 Research design

The research design developed for this research was based on methodological approaches considered most appropriate to accommodate the trans-disciplinary nature of the study. At a fundamental level, the approach was Popper’s (1935) hypothetico-deductive reasoning approach. Importance was placed on creating a design that would enable triangulation of data at the micro and macro levels for further analysis.

The research design used a four-tiered format:

1. Trial observation
2. Interviews and questionnaires
3. Discourse analysis of court transcripts
4. Discourse analysis of Court of Appeals reports.
Socio-linguistic approaches were applied to investigate how translated transcripts are produced and used in a court setting. The design accommodates the dynamic nature of communication flow from utterance to evidence, comparing the approaches to transcribing LOTE in a legal context to those taken in a military environment. Watson states that 'interpretation from a standpoint different from the work itself can give us new insights into the work and enhance our appreciation of it' (1993, p. 163). Information provided from a military perspective contributes to an understanding of the language capability upon which law enforcement agencies rely to perform transcription tasks for operational and evidentiary purposes.

3.3.1 Data collection

The primary focus of data collection for this study centred on preparation and use of translated transcripts of telephone intercept and listening device recordings. It was therefore necessary to position the sense made of those instruments within the wider context of their production and use, noting that critical analysis requires consultation with the producers and consumers of texts so the analysis is not based solely on the researcher’s own interpretation of the meaning contained in a text (Cameron 2001; Widdowson 1998). It is for this reason that both quantitative and qualitative approaches to data collection were considered appropriate.

The researcher carried out a scoping study that proved beneficial before seeking ethics clearances to collect primary data. He consulted senior Australian Defence Force officers, Australian Defence Force Academy academics and ACC executive level officers to gain an appreciation of how to approach the research without compromising national or personal security.

As well, the researcher obtained ethics approval to interview judicial officers, barristers, court interpreters, LET, CTL and CTS. The proposed activity was assessed to be of low risk because:

- data were collected from unclassified sources
- participants were de-identified
- personal data associated with the case studies were de-identified
- personal risk to the researcher was considered minimal.
The data were collected using a four-tiered model. The data collected from court observation at Tier 1 were used as a basis from which to design questionnaires and semi-structured interviews used in Tier 2. Tier 2 involved participation by key stakeholders who took part in questionnaires and interviews relating to areas of professional experience, translation style and accuracy, skills and training, intelligence support and the working environment. The sampling method used for the questionnaires and semi-structured interviews at Tier 2 was non-probabilistic, similar to the approach Professor Hale took in her *Interpreter policies, practices and protocols in Australian Courts and Tribunals: A national survey* (Hale 2011). The decision to use case studies relating to the Vietnamese language and drug-related crime was made for reasons of convenience—the researcher is a professional Vietnamese translator; and practicality—the researcher has ready access to the Melbourne court precinct.

Discourse analysis was conducted on selected court transcripts at Tier 3 to validate and augment findings of Tiers 1 and 2. A fourth tier was added following completion of data collection to further validate results. In Tier 4, appealed decisions heard in the Victorian Supreme Court of Appeal (VSCA) and the New South Wales Court of Criminal Appeal (NSWCCA) addressing issues directly related to translated transcripts as evidence in drug-related trials were analysed. Information from sources of data within and across the four tiers of collection was triangulated and is analysed in Chapter 5.

Due to the specialised and sensitive nature of this research, a purposive sampling approach was implemented using a tiered approach to multiple data sources. Figure 3-1 shows the method of collection across the four tiers.

The sample populations used for this research included those with experience in traditional and non-traditional areas of security related to covert electronic surveillance activities involving preparation of translated transcripts. Participants in interviews comprised purposively selected judicial officers, barristers, court interpreters, LET, CTL and CTS. The sampling frame also comprised discourse analysis of extracts of translated transcripts of Vietnamese that had been used as evidence in three drug-related trials heard in the County Court of Victoria. Additional information was collected from analysing reports of appealed cases heard by the VSCA and the NSWCCA.
Figure 3-1: Four-tiered research design

Tier 1
Trial observation
- Case study 1
- Case study 2
- Case study 3
- Additional trials (3)

Tier 2 – Group 1
Questionnaires & interviews
- Judicial officers
- Barristers
- Court interpreters
- LET

Tier 2 – Group 2
Questionnaires & interviews
- CTS
- CTL

Tier 3
Court transcripts
- Case study 1
- Case study 2
- Case study 3*
  (*unavailable – under appeal)

Tier 4
Appealed decisions
- Court report 1 – NSWCCA
- Court report 2 – NSWCCA
- Court report 3 – NSWCCA
- Court report 4 – VSCA
- AUSTLII database

Note: AUSTLII = Australasian Legal Information Institute; CTL = cryptologic linguists; CTS = cryptologic supervisors; LET = law enforcement interpreter/translator; NSWCCA = New South Wales Court of Criminal Appeal; VSCA = Victorian Supreme Court of Appeal.
Wood and Kroger note that in relation to more conventional research, discourse-analytic research may be criticised for using relatively smaller samples. However, the authors defend this approach due to the detailed nature of discourse analysis, and state that it is more important to ‘examine each project individually for what it claims and assess whether any inferences made are reasonable’ and that the ‘sample should be relevant to or representative of the phenomenon of interest’ (2000). The authors further state that:

researchers in grounded theory may develop their analysis with a small group of participants who are relatively similar on some dimension and then check the analysis with a different group. In contrast, discourse analysts might want to begin with participants who, although similar in some sense, are different enough that they might give different versions (Wood & Kroger 2000, p. 81).

The approach taken to this research is one which uses a systematic method of triangulating the data obtained from participants who either perform the same tasks in a different language or setting, or who are in some way suitably placed to comment on how translated transcripts are used as evidence in court. Information collected across the four-tiered design resulted in achieving data saturation where no new categories were able to be identified. Wood and Kroger state that, in discourse analysis, the important point is not so much about data saturation (although it is assessed that this was achieved) rather it is about the researcher having collected sufficient data in order to make an argument of sufficient quality that ensures the argument is well grounded. The authors emphasise that discourse analysts should not have to apologise for small numbers of participants or texts stating that ‘bigger is not necessarily better’ (2000, p. 81). Within the context of this research, ‘bigger’ was not an option due to the specialised nature of the field under investigation. Data saturation was achieved and enough data were collected that points to evidence of systemic problems across languages, jurisdictions and trials involving alleged illicit-drug activity.

3.3.2 Tier 1 – Court observation

The first tier of data collection for this research involved three criminal trials heard in the Victorian County Court between May 2012 and March 2014 during which the use of translated transcripts was observed. Notes were taken of relevant details and events observed during each trial. Written note taking was the only
method available to the researcher to record courtroom activity, as electronic recording of trials is not permitted in the Victorian County Court.

The aim of observing these trials was to develop the data collection strategy to determine the best methods by which to address three research questions:

1. What evidence points to systemic deficiencies in language capability available to combat illicit-drug activity?
2. How do identified deficiencies affect the judicial process?
3. What causal factors contribute to these deficiencies?

As the researcher himself is a professional Vietnamese translator, it was both logical and practical to observe trials where transcripts had been translated from telephone and listening device interception of Vietnamese conversations. More than 100 hours of direct personal observation across the three trials formed the three case studies; the researcher also observed a further three trials when the opportunity arose.

It is important to note that this activity did not involve participant-observation methods. It was not the aim of the researcher to influence the environment under study. However, this aim proved difficult to maintain as the research progressed because judicial officers and others having business in the court began to suspect the translated transcripts contained significant errors.

During the conduct of the trial, the researcher was able to listen to the telephone intercept and listening device recordings in Vietnamese played in court and then compare that with the corresponding translated transcript, which was read aloud in English by a court-appointed officer.

This researcher was well placed to evaluate and comment on the veracity of translated transcripts presented as evidence as he was the Chairperson of the NAATI Vietnamese Panel of examiners at the time of conducting this research. The holder of this position is responsible for overseeing the assessment of national accreditation tests undertaken by candidates seeking para-professional and professional accreditation in translating and interpreting in Australia. In addition, this researcher has qualifications as a military cryptologic supervisor/linguist with specialised language training in the French and Vietnamese languages, and has been employed in areas of national security involving transcription of Vietnamese into English for operational, strategic and evidentiary purposes. This researcher also has extensive
experience in translating code words and jargon from LOTE while employed in government areas of intelligence and security.

The researcher noted examples of errors detected in the translations presented at the trial in Case study 1; they are detailed in Chapter 4. These findings also formed the basis for designing further instruments of data collection used in Tiers 2, 3 and 4. It was considered necessary to triangulate the data collected through observations with other sources of information to validate findings.

3.3.3 Tier 2 – Questionnaires and semi-structured interviews

Observation of trials in Tier 1 provided evidence of serious errors in translated transcripts. The researcher decided to distribute questionnaires and to interview key stakeholders involved in use and preparation of translated transcripts. The sample populations included judicial officers of the Victorian County Court, barristers admitted to the Victorian Bar, court interpreters, community interpreters/translators engaged by LET, military CTS and CTL. People invited to participate were purposely selected based on their specialist skills, knowledge and experience relating to use or production of translated transcripts from LOTE. The population of suitable participants from the specialist areas of the legal fraternity, intelligence, law enforcement and legal interpreting is significantly small, therefore, a specific targeted approach was considered the most effective method of inviting suitable participants. All participants were experienced specialists in their respective fields of expertise and were informed of how their data would be processed and presented. The selection process was purposive with preference given to those people appropriately qualified and experienced to provide the required data.

Most participants worked in sensitive areas of law enforcement, the judicial system and the Australian Defence Force relating to covert electronic surveillance operations associated with criminal activity and/or national security. During the conduct of this research, the global media was regularly reporting on the court martial in the US of Bradley Manning who had been detained for allegedly divulging national security information unlawfully. In addition, Wikileaks leader, Julian Assange, was seeking asylum in the Ecuadorian embassy in the UK, and the former National Security Agency analyst, Edward Snowden, had been accused of divulging national security information to the global media before fleeing to Russia in 2013. These events sent shockwaves through government intelligence agencies, and the
ramifications for diplomatic relations between many countries were widely reported in the media. Careful planning ensured the research was conducted ethically and with appropriate approvals. Importance was placed on ensuring sensitive and/or classified information would not be accessed or used during the conduct of data collection. Before starting data collection, participants were asked not to divulge classified or sensitive information when completing questionnaires or when responding to interview questions. In addition, questions were designed to avoid potential embarrassment or inappropriate collection of classified or sensitive information. For these reasons, no audio recordings were taken of interviews. Laster and Taylor also used semi-structured interviews to collect data from professionals when researching the role of court interpreters where interviews were not electronically recorded. They took detailed notes during the interviews, which were written up immediately upon completion of the interview (1995). The same strategy was used for recording data from semi-structured interviews in this study. All data collected for this research were de-identified and all research participants were allocated numerical designators cross-referenced with research objectives and questions contained in questionnaires and interviews.

Due to the sensitive nature of this study, it may be considered extraordinary that research in this area was at all possible. It is assessed that this investigation would not have been possible had the researcher not held relevant qualifications and experience in transcription tasks undertaken in areas of national security intelligence and law enforcement. The level of trust participants afforded this researcher to use the information they provided carefully and to protect their identities was humbling and made this study possible. It is proposed that the ability to realise appropriate ethics approvals to pursue this area of research is indicative of the robust nature of the methodology and design used in this study.

Interviews with key participants were conducted between November 2013 and February 2014. Table 3-1 shows the topic areas commented upon by the sample group. Interviews were semi-structured and took place at locations convenient to individual participants. Interviews were conducted with interstate participants located in New South Wales, Australian Capital Territory, South Australia, Victoria, Queensland and Tasmania.
The interviews were designed to take about 45 minutes; however, this fluctuated depending upon the contributions each participant made. Questionnaires were provided to barristers, court interpreters, LET and CTL immediately before interviews began. The rationale for using this format was to focus participants on the issues upon which they would be asked to comment during the interview. This method proved highly effective, enabling the researcher to elicit information directly relevant to this study. The questionnaires consisted of closed, multi-choice questions and can be viewed at Appendixes F to I. On completion of the questionnaire, participants were given the option to either continue with the interview or to withdraw. All interviewees voluntarily participated.

Table 3-1: Key areas of investigation, by sample population

<table>
<thead>
<tr>
<th>Collection instrument/Sample pop.</th>
<th>Group 1</th>
<th>Group 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Questionnaire</td>
<td>JO</td>
<td>BAR</td>
</tr>
<tr>
<td>Interview</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Topic area</th>
<th>Group 1</th>
<th>Group 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional experience</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Translator (transcripts) skills and training</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Translated transcript style and accuracy</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Intelligence support</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Working environment</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Other information of relevance</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Note: BAR = barristers; CI = court interpreters; CTL = cryptologic linguist; CTS = cryptologic supervisor; JO = judicial officers; LET = law enforcement interpreter/translator.

From the analysis of notes taken during Tier 1 – Court observation, ample evidence highlighted a range of issues to shape the course of the second tier of data collection. Questionnaires and semi-structured qualitative interviews with judicial officers, barristers, court interpreters, and community interpreters/translators engaged by law enforcement agencies formed the first of two groups to be interviewed during this second tier of data collection. Group 2 comprised CTL and CTS who also responded to questionnaires and semi-structured interviews addressing common areas of interest between the two groups.

Participants were provided with a consent form to read and, if they felt comfortable to proceed with the questionnaire and interview, to sign. On completion
of the short questionnaire, participants were again asked if they felt comfortable to proceed with the interview. All agreed to participate in both data collection methods.

**Areas of investigation and associated objectives**

The primary objective of Group 1 (judicial officers, barristers, court interpreters and LET) was to determine what evidence points to deficiencies in language capability available to meet non-traditional security requirements. Supporting objectives (Table 3-2) provided the framework for the questionnaires and semi-structured interviews.

**Table 3-2: Tier 2 – Group 1 supporting objectives**

<table>
<thead>
<tr>
<th>Designator</th>
<th>Area</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>1A</td>
<td>Experience</td>
<td>To determine the experience and operating environment of interviewed court interpreters, barristers, law enforcement officials and law enforcement translators/interpreters in relation to transcripts from electronic surveillance.</td>
</tr>
<tr>
<td>1B</td>
<td>Skills and training</td>
<td>To identify any skills gap that may exist between the general translating and interpreting skills held by community interpreters and those skills required to produce transcripts from electronic surveillance and how any skills gap may be overcome.</td>
</tr>
<tr>
<td>1C</td>
<td>Translation style and accuracy</td>
<td>To identify problematic areas of transcripts, the frequency of occurrence, and potential causal factors.</td>
</tr>
<tr>
<td>1D</td>
<td>Translation style and accuracy</td>
<td>To determine the impact errors in transcripts have on judicial processes and how these issues may be resolved.</td>
</tr>
<tr>
<td>1E</td>
<td>Translation style and accuracy</td>
<td>To identify specific areas of potential or actual translation error contained in transcripts and how they affect the flow of communication in court.</td>
</tr>
<tr>
<td>1F</td>
<td>Translation style and accuracy</td>
<td>To determine what evidence, if any, there is of pragma-linguistic failure in transcripts in relation to alleged use of code words and/or jargon.</td>
</tr>
<tr>
<td>1G</td>
<td>Intelligence support</td>
<td>To determine the level of background information and intelligence support provided to interpreters/ translators.</td>
</tr>
<tr>
<td>1H</td>
<td>Working environment</td>
<td>To determine how the working environment may impact on the translation process.</td>
</tr>
<tr>
<td>1I</td>
<td>Working environment</td>
<td>To determine whether a unique genre of language is used in translated transcripts.</td>
</tr>
<tr>
<td>1J</td>
<td>Additional information</td>
<td>To collect additional information of relevance.</td>
</tr>
</tbody>
</table>
The primary objective of Group 2 (CTS and CTL) was to determine how the principles of a cryptologic language capability are applied in the military security environment and how they compare with the law enforcement working environment and methods relating to the transcription of LOTE. Supporting objectives (Table 3-3) provided the framework for the questionnaires and semi-structured interviews.

Table 3-3: Tier 2 – Group 2 supporting objectives

<table>
<thead>
<tr>
<th>Designator</th>
<th>Area</th>
<th>Objective</th>
</tr>
</thead>
<tbody>
<tr>
<td>2A</td>
<td>Experience</td>
<td>To determine the experience and operating environment of interviewed cryptologic linguists and supervisors in relation to transcripts/reports from electronic surveillance.</td>
</tr>
<tr>
<td>2B</td>
<td>Skills and training</td>
<td>To identify any skills gap that may exist between the skills held by translators and interpreters and transcription skills required of cryptologic linguists in relation to producing transcripts from electronic surveillance, and to determine how any skills gap may be overcome.</td>
</tr>
<tr>
<td>2C</td>
<td>Translation style and accuracy</td>
<td>To identify problematic areas of translated transcripts, the frequency of occurrence and potential causal factors.</td>
</tr>
<tr>
<td>2D</td>
<td>Translation style and accuracy</td>
<td>To determine the impact errors in transcripts have on meeting operational and strategic objectives and how these issues may be resolved.</td>
</tr>
<tr>
<td>2E</td>
<td>Translation style and accuracy</td>
<td>To identify specific areas of potential or actual translation error contained in transcripts and how they might affect operational objectives.</td>
</tr>
<tr>
<td>2F</td>
<td>Translation style and accuracy</td>
<td>To determine the likelihood of pragma-linguistic failure in transcripts in relation to use of code words and/or jargon.</td>
</tr>
<tr>
<td>2G</td>
<td>Intelligence support</td>
<td>To determine the level of background information and intelligence support provided to cryptologic linguists.</td>
</tr>
<tr>
<td>2H</td>
<td>Working environment</td>
<td>To determine how the working environment may impact on the translation process.</td>
</tr>
<tr>
<td>2I</td>
<td>Working environment</td>
<td>To determine whether or not a unique genre of language is used in transcripts.</td>
</tr>
<tr>
<td>2J</td>
<td>Additional information</td>
<td>To collect additional information of relevance.</td>
</tr>
</tbody>
</table>

In order to correlate the primary and supporting objectives with the questionnaires and the semi-structured interviews, an intricate system of numerical mapping was used to correlate the data collected (Appendix D). This system of
mapping ensured questions remained relevant and focused and responses could be easily analysed across data sources during the analysis phase.

Each questionnaire contained no more than 12 questions and was in a multiple-choice format. Each questionnaire was estimated to take approximately five minutes for the participant to complete. Questionnaires were uniquely designed for specific populations sampled and not all populations were asked to complete a questionnaire. The rationale underpinning this approach was that while judicial officers, barristers, court interpreters and LET share a common interest in the working environment, each sample population pursues different goals and approaches the judicial process from differing perspectives. A 30-minute semi-structured interview was conducted with judicial officers. They were not asked to complete a questionnaire. The semi-structured interview templates used for each participant group are contained at Appendixes I to O.

**Judicial officers**

Face-to-face semi-structured interviews were conducted with three County Court judges. The interviews were conducted within the Melbourne County Court precinct and varied between 30 and 45 minutes. The purpose of the interviews was to determine what aspects, if any, of translated transcripts are viewed as problematic to the effective execution of judicial processes.

Judicial officers interviewed had experience in trials involving serious and organised crime including terrorism and particularly drug-related crime. Drug-related trials accounted for the majority of cases they had heard in the County Court. In these trials it was stated that the court frequently relies upon the services of court interpreters and that the predominant LOTE associated with drug-related trials was Vietnamese. It was also stated that most of these trials involved evidence from telephone intercept and listening device recordings translated from LOTE.

All participants said electronic surveillance, in the form of telephone intercept and listening device recordings, has become increasingly important to prosecuting drug-related crime; one judge noted this type of evidence has become more prevalent over the past two decades with significant advances in telecommunications. A judicial officer said transcripts are ‘utterly important’ and that many trials cannot proceed without ‘accurately translated transcripts’.
Barristers

Barristers with experience in prosecuting and defending people in drug-related trials heard in the County Court were asked to complete a questionnaire and were interviewed. The questionnaires were completed immediately before the interviews, which were conducted at locations where the participants felt most comfortable. Interviews were all conducted outside the County Court precinct.

All barristers declared experience as either defence or prosecution counsel in drug-related cases where translated transcripts from Vietnamese were used in evidence. Two of the three barristers interviewed held 10 years or more experience at the Victorian Bar; the third had more than five years’ experience. Participants stated that most cases with which they dealt were related to illicit-drug and fraud offences. Barristers interviewed also said they frequently work with interpreters in court, and that illicit-drug activity accounts for most cases where translated transcripts from electronic surveillance are presented as evidence. One barrister said telephone interception represents about 75 per cent of the evidence presented in cases as it has proven the most effective method of evidence collection available to law enforcement. It was stated that the most common languages associated with transcripts were Vietnamese, Chinese and Arabic.

Court interpreters

Court interpreters with accreditation in a range of LOTE were selected as participants to determine the extent of systemic errors occurring in translated transcripts from electronic surveillance recordings.

Court interpreters with professional interpreter/translator accreditation in Vietnamese, Mandarin, Indonesian and Cantonese participated in the research. Four participants had at least 10 years professional experience and one had at least five. Participants had experience as court interpreters in drug-related trials where translated transcripts from electronic surveillance recordings of conversations collected through telephone interception/listening device methods were used as evidence in court. Participants reported that most trials requiring their interpreting services involve illicit-drug activity and/or fraud heard in the County Court of Victoria and the Melbourne Magistrate’s Court.
Law enforcement translators

LET are community interpreters/translators engaged by law enforcement agencies to transcribe conversations from LOTE to English. The conversations have been intercepted and recorded by police using electronic surveillance methods of telephone interception and/or listening devices.

Topic areas covered for LET included skills training and intelligence support, which are two specific areas not focused upon when interviewing court interpreters. This is because the scope of this research is limited to preparation and implementation of translated transcripts and how translated transcripts may affect judicial proceedings. This study is less concerned with skills and qualifications held by court interpreters, which has been the subject of investigation in other research projects (see Hale 2011). However, it is acknowledged that the two areas are inextricably linked in relation to the flow of communication in a court environment. The results of this study will show that errors in translated transcripts cause significant problems for court interpreters.

Seven LET with professional accreditation in Vietnamese, Mandarin, Cantonese and Indonesian completed questionnaires and participated in interviews. All participants had provided language services to law enforcement agencies involving production of translated transcripts from their respective LOTE skills to be used in court for evidentiary purposes. Participants had produced transcripts relating to drug-related crime, money laundering, fraud, sex slavery and suspected terrorism-related activity. All participants had experience in preparing translated transcripts for use as evidence and performing transcription tasks in support of police tactical operations.

Cryptologic linguists

This thesis uses the acronym ‘CTL’ to refer to military cryptologic linguists. Four CTL with both tactical and strategic experience in electronic surveillance operations completed a brief questionnaire and participated in interviews. Participants from this group held defence force and nationally recognised (not NAATI) specialist language qualifications in ‘applied’ Indonesian, Malay and/or Russian. The rationale for interviewing experienced CTL was to ascertain any differences in approach they take compared to LET in producing translated
transcripts from LOTE and what training and support services are available to each group.

The topics covered in the questionnaire and interview schedule for CTL were the same as those used for collecting data from LET. The questions asked were designed to address aspects of transcription common to both areas of specialisation. The rationale for mirroring methods used for collecting data in these two areas was to enable a contrastive analysis to be conducted, particularly in relation to topics of intelligence support and translation of jargon or code words.

Participants’ qualifications and experience in this specialised area were extensive. Both CTL and LET participants had experience in transcribing communications conveyed in LOTE for operational and strategic purposes; and in providing tactical intelligence support and strategic intelligence collection relating to counter-narcotics activity, counter-terrorism, people smuggling and arms trafficking.

**Cryptologic supervisors**

Supervisors of cryptologic linguists participated in interviews and are referred to in this thesis by the acronym CTS. The rationale behind interviewing CTS was to collect data relating to the problems decision makers face when relying upon information derived from LOTE where they themselves have little or no control over determining the veracity of the translations they receive from language specialists. This is similar to a courtroom situation where a great deal of reliance is placed on the accuracy of the translated transcript and the performance of court interpreters where most other participants in the court environment are not proficient in the LOTE.

Initially, CTS participants were asked to provide an overview of their experience working with CTL in operational environments. The experience the four interviewed CTS held within cryptologic operations was extensive, accounting for more than 100 years between them. All participants had supervised intelligence teams comprising linguists proficient in European, Middle Eastern, Asian and other languages.

CTS did not hold professional language qualifications. All participants were asked not to reveal classified or sensitive information at any stage. The semi-structured interview format used for CTS can be found at Appendix O.
Summary

Tier 2 accounts for the human participation aspect of this research. Figure 3-2 shows experience, in years, participants hold in their respective fields of expertise relating to preparing and/or implementing translated transcripts.

![Figure 3-2: Participant experience in years, by sample population](image)

Note: BAR = barristers; CI = court interpreters; CTL = cryptologic linguist; CTS = cryptologic supervisor; JO = judicial officers; LET = law enforcement interpreter/translator.

3.3.4 Tier 3 – Court transcripts

Court transcripts from three criminal trials involving serious and organised crime (illicit-drug activity) were selected for discourse analysis. Each trial represented a single case study. Court transcripts were obtained from the Victorian Government Registration Service in December 2013 and were used to augment and validate findings from data collection in Tiers 1 and 2. Relevant extracts of court transcripts are contained in Chapter 4. Unfortunately, the researcher was denied access to court transcripts for Case study 3 at the time of collecting data because an appeal was pending. However, data obtained during observation of the trial (contained in Tier 1 results) provided valuable information that was used to corroborate and validate findings collected in the preceding trials (Case study 1 and Case study 2).
3.3.5 Tier 4 – Appealed decisions

Reports of four appealed cases were retrieved from the Australasian Legal Information Institute (AUSTLII at austlii.edu.au) following a keyword search on ‘code words’ and was the source of information collected at Tier 4. All appealed decisions were from drug-related trials where translated transcripts were admitted as evidence and contained alleged code words for drugs. The appeals were heard in the VSCA and the NSWCCA. This phase of collection and analysis provided data relating to how evidence proffered by expert witnesses is ruled permissible or impermissible in accordance with case law and the rules of evidence. It is the final step in the process relating to the life cycle of a translated transcript. Selection of the four case studies in this tier was purposive, based on relevance of content—they were appeals relating to drug-related code words.

3.3.6 Data analysis

The researcher used grounded theoretical approaches and techniques to help code the data, as described by Strauss and Corbin (1990). Commencing with court observation, the grounded theory approach of using open coding methods was used to form more structured approaches to data collection and subsequent analysis using methods of triangulation. A numerical mapping system established before collecting the data proved useful in categorising key themes while leaving scope for the emergence of newly labelled information.

Data used for analysis was drawn from notes taken during Tier 1 – Court observations, and information obtained at Tier 2 – Questionnaires and semi-structured interviews, and relevant information extracted at Tier 3 – Court transcripts. The questions from questionnaires and interviews were grouped under functional headings in tables (Appendix C). During the instrument design phase, each question was numerically designated and correlated with an objective when the data collection instruments were created. This made it easier to map objectives, data sources, questions and associated responses.

After the data from each sampled population at Tier 2 were collated, axial coding was used to correlate related responses from all participants to identify any emerging common patterns or themes. It was found that the structured design of specific categories used for the questionnaires and interviews at Tier 2 provided a
suitable framework to support a selective coding approach to analyse all data collected across the four-tiered design. The data collected from questionnaires and interviews conducted with participants from law enforcement and legal environments were later compared with information provided by respondents from the military environment. The key themes used in Tier 2 analysis were used to guide content analysis of the court transcripts at Tier 3 to look for data that would augment, clarify and validate the findings from Tier 1 and Tier 2. The information analysed and discussed at Tier 4 completed the life cycle of translated transcripts from interception, translation and preparation to implementation and, in relatively few cases, through the court of appeal. A pattern-matching approach was used across the data collected from the four-tiered framework of the research design. The complex movement vertically between tiers and horizontally across data sources culminated in findings of increased reliability, credibility and veracity.

The results were used to determine probable causal factors related to deficiencies in language capability supporting non-traditional security objectives, specifically in relation to combating serious and organised crime. At no stage was qualitative software used to analyse data. This is because the data were not recorded verbatim due to legal restrictions imposed on the ability to electronically record data at the source and to issues of confidentiality. The data were analysed manually.

3.3.7 Ethics and limitations

Ethical considerations associated with this study were complex due to increased media coverage of government-sanctioned electronic surveillance operations targeting domestic communications systems globally. Media reports revealed details of telephone interception techniques that intelligence and law enforcement agencies employ, which raised public awareness of vulnerabilities surrounding private communications. Leaked information about capability and intelligence targets led to heightened vigilance adopted by people engaged in electronic surveillance operations in areas of law enforcement and national security, particularly the intelligence sector. It was therefore necessary to approach this research openly and carefully to protect the interests of participants and relevant agencies and organisations. At no time was classified information accessed or used during the conduct of this study. Each questionnaire and interview format carried a request that participants not reveal classified information.
Questionnaires and interviews were designed carefully to avoid collection of unnecessarily intrusive or sensitive data. The researcher has postgraduate qualifications in investigative interviewing and followed the principles of cognitive interviewing techniques. Questions contained in questionnaires and semi-structured interview schedules were written and structured carefully in order to elicit the required information and to optimise the time available with participants.

3.4 Summary

The research design used in this study proved a robust and effective way to achieve the research objectives. Cross-referencing of research objectives with data sources, including each individual question, was an effective and efficient means of collecting, coding and analysing data. No adverse outcomes were experienced during the course of data collection, and participants volunteered favourable comments in relation to the way questionnaires and interviews were structured and conducted.

The results of the data collection phase were mostly consistent across the four tiers of the research design. What was observed in trials was reflected in responses to the questionnaires and semi-structured interviews. Discourse analysis of the court transcripts at Tiers 3 and 4 further confirmed and clarified what had been revealed in Tiers 1 and 2.
Chapter 4: Results

4.1 Introduction

A socio-linguistic approach to evaluating language capability supporting the areas of law enforcement enabled the researcher to transcend macro and micro levels of analysis across the four tiers of data collection. This chapter contains the results of data collected across the four-tiered framework of observation, questionnaires and interviews, and discourse analysis of court transcripts and court of appeal reports. Where relevant, quantitative data are displayed in figures followed by amplifying data collected from interviews and discourse analysis of court transcripts. Interpretation of what these results mean in the broader context of this research is discussed in Chapter 5.

4.2 Tier 1 – Court observation

4.2.1 Introduction

Notes taken during court observation of Vietnamese drug-related trials across the three case studies revealed evidence of errors contained in translated transcripts and the adverse effect they have on judicial processes. The results associated with data collected through observation carried out for each case study are discussed in this chapter. Results are preceded by an overview of the trial. De-identification methods have been used.

4.2.2 Case study 1

This trial was a criminal trial heard in the County Court of Victoria. The Crown alleged that the accused person had imported a commercial quantity of a prohibited substance, namely heroin, and was further accused of trafficking. The evidence presented in this trial comprised translated transcripts of conversations held in Vietnamese between the accused and others. The translated transcripts were produced from audio recordings translated by a community LET. Police obtained the recordings through electronic surveillance using telephone interception and deployment of covertly placed listening devices. Other forms of evidence presented by the Prosecution included expert witness testimony, witness statements, items, documents and photographs. Vietnamese court interpreters were required to assist the
court and were present to interpret for the accused who also decided to provide evidence as a witness in his own defence.

Because the accused had decided to give evidence in this trial, it was necessary for the court to play selected audio recordings of intercepted conversations held in Vietnamese to which the accused was a party. In order for the court to understand the utterances recorded in Vietnamese, the format used in court during questioning was:

- Counsel referred to a telephone call or listening device recording that contained a particular utterance or series of utterances they wished to address when examining or cross-examining the accused.
- With the assistance of an interpreter, the accused was made aware that an intercepted audio recording was about to be played for him to listen to.
- The audio recording of the utterances, in Vietnamese, was played to the court.
- On completion of playing the recording, an independent officer appointed by the court read the corresponding translated transcript (previously translated into English by a LET—not present at the trial) to the court in English.
- Counsel then put questions to the accused about the recorded conversations.
- The court interpreter interpreted Counsels’ questions from English to Vietnamese for the witness.
- The witness replied in Vietnamese.
- The court interpreter interpreted the witness’ response from Vietnamese into English for the court.

This appeared to be the only method available to the court, which enabled all people present in the courtroom to understand what was being said in Vietnamese, which included utterances contained in audio recordings presented as evidence.

**Results**

The first indication that there were potential problems with the translated transcripts in this trial occurred on the first day the transcripts were used as an aid to understanding the intercepted recordings. This researcher listened to the audio recordings of Vietnamese conversations played to the court and compared the original Vietnamese utterances with the translated transcript read to the court in English. It was clear to this researcher that major areas of distortion, omission and
unjustified additions were evident in the translated transcripts in addition to serious English grammatical errors. Darwish made an important point in relation to ‘correctness’ of translating evidentiary documents. He said:

a grammatical mistake that disguises itself as another correct grammatical form may not be detected as such and may cause interference with the original intents of the message (2012, p. 66).

Such grammatical errors appeared to be evident throughout the translated transcripts presented at the trial. Examples of errors detected in transcripts are provided later in this section.

During the trial designated Case study 1, the Prosecution called a Victoria police officer to give evidence as an expert witness. The officer did not speak or understand the Vietnamese language but gave expert opinion as to the meaning of alleged code words and jargon used by the accused as allegedly contained in the translated transcripts of Vietnamese conversations. This is a common practice in courts both in Australia and the US in accordance with the relevant rules of evidence. It quickly became apparent to the researcher that some of the alleged words cited by the police officer may have been poor lexical choices and misinterpretations made by the LET who had prepared the translated transcript. Of particular note, ‘thingy’ was alleged to mean one ounce of heroin within the context of some intercepted telephone conversations. This prompted the researcher to focus more closely on lexical choices made by the translator that were alleged to be either code words or jargon. The word ‘thingy’ does not have a direct lexical equivalent in Vietnamese in the context in which it was being used. The Vietnamese word ‘ấy’ appeared to be the lexical unit in Vietnamese that was translated as ‘thingy’. The Vietnamese word ‘ấy’ can be used as either an exophoric or anaphoric reference word. In the 27 years this researcher has been a professional Vietnamese translator, he has never used or seen ‘thingy’ in any English translation of Vietnamese speech or written text, and it seemed particularly unusual that ‘byss’ would be translated as ‘thingy’ within the context of the recorded conversations used as evidence in the trial.

Continued observation of the trial revealed further inconsistencies in the translated transcripts, which evidently had an adverse effect on the communication process during the trial. Errors contained in the translated transcripts appeared to be, where possible, accommodated by the court interpreter in order to facilitate
uninterrupted flow of communication between counsels’ questioning and the accused’s response. However, there were occasions where utterances contained in the transcript were challenged by the defence counsel. Based on these observations there were indications that:

- Transcripts contained significant errors.
- Distortion of meaning increased during counsel’s examination of the witness in relation to translated transcripts when communicating through a Vietnamese court interpreter.
- Court interpreters remained impartial and did not challenge the alleged accuracy of the translated transcript.
- There was legal argument about the meaning of what was contained in the translated transcripts.

The researcher used notes taken during observation of this trial to conduct discourse analysis of selected utterances heard in Vietnamese and translated into English. Grammar analysis was conducted of the translated transcripts revealing significant errors, as demonstrated in data samples 1A to 1E below. The Leipzig Glossing conventions for interlinear morphemic translations used by linguists were not used for the purposes of this thesis, as it is not anticipated that all readers will have a linguistic background. Glosses and more detailed linguistic description may be applied to these examples for future publication.

Mapping sentence grammar between languages is not a complex task; however, even the context of simple sentences can influence the interpretation made of an utterance (Bowe & Martin 2007). The aim of providing samples containing extracts from translated transcripts in the format below, was to provide the reader with an understanding of what was uttered in the source text (Vietnamese), a word-for-word literal translation from Vietnamese to English, how the English appears in the translated transcript, and a proposed alternative translation (produced by this researcher) conveying sense. These samples demonstrate the approach a translator takes between applying literal and free (pragmatic) strategies during translation and demonstrates the importance of context. Five utterances were randomly selected for analysis.
Data sample 1A

This sample contains an example of distortion of meaning and omission.

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Translated transcript</td>
<td>Mother fucker! I don’t know how to divide it. Divide it and I would lose damn it.</td>
</tr>
<tr>
<td>Proposed alternative translation</td>
<td>Mother fucker! I don’t know how to divide it. I lose (some) when I divide it, damn it. Each time I divide into small portions I lose (some).</td>
</tr>
</tbody>
</table>

Analysis

Modal use of the conditional verb ‘would’ in this context suggests the action of dividing may have yet to occur; however, there is no evidence in the Vietnamese text to suggest the speaker expresses hesitation to carry out the intended task of ‘dividing’ for fear of ‘losing’. Rather, the speaker is expressing an observation of fact rather than hypothesis. Therefore, as reflected in the proposed alternative translation, the expression is maintained in the present tense as a statement of action and consequence without condition as it appears in the translated transcript.

The translator has chosen to omit the final statement made by the speaker in the source text, which clarifies the context of the preceding statements in relation to why each time the action of dividing is causing loss. In the final statement, the speaker provides clarifying information as to why loss is being experienced, stating that the loss is experienced ‘when dividing into small portions’. This omission represents an omission of significant evidentiary value noting that the alleged context refers to the dividing up of heroin.

Data sample 1A of the translated transcript is assessed as not representing an optimally approximated translation.

Data sample 1B

This sample contains an example of distortion, non-transference of idiomatic expression and unjustified additions.

<table>
<thead>
<tr>
<th>Source text</th>
<th>Chia-là-mất-chết.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literal translation</td>
<td>Divide-is-lose-dead.</td>
</tr>
<tr>
<td>Translated transcript</td>
<td>Lose it, God oh God, is it dead?</td>
</tr>
</tbody>
</table>
Proposed alternative translation | Dividing (it) means losing (some), damn it!

**Analysis**

The source text contains a statement and an idiomatic exclamation. There is no evidence or inference of an interrogative component. The statement contained in the source text represents the speaker’s observation of an event; that is, ‘dividing means loss’ followed by an idiomatic expression ‘chết’. When used here ‘chết’ is an expression of frustration and can be more accurately translated as an idiomatic equivalent such as ‘damn it!’ as presented in the proposed alternative translation.

The translator of the translated transcript has omitted the term ‘divide’ and also the conjunction word ‘to be’ or ‘meaning’ to connect with ‘losing’ or ‘loss’. The translator has also added the expression ‘God oh God’ for reasons unknown.

This segment of the translated transcript contains unjustified additions together with an interrogative component that does not exist in the source text with evidence of a significant distortion of meaning due to the translator literally translating an idiomatic expression.

**Data sample 1C**

This sample contains evidence of significant distortion in relation to exophoric referencing.

<table>
<thead>
<tr>
<th>Source text</th>
<th>Cái đó đó, có ấy chút xiù à, tài thằng kia lấy thứ chút xiù.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literal translation</td>
<td>Classifier-that-that,-have-it-little-(particle),-because-guy-that-take-try-little-bit.</td>
</tr>
<tr>
<td>Translated transcript</td>
<td>That one, only thingy a little bit, because the guy thingy, tested a little bit.</td>
</tr>
<tr>
<td>Proposed alternative translation</td>
<td>That one; it’s smaller because that guy took a little bit to try it.</td>
</tr>
</tbody>
</table>

**Analysis**

The source text is clearly expressed and should not have posed any problems for translation. Importantly, the words ‘Cái đó đó, có ấy’ are used here as exophoric reference terms which refer to an item outside of the text but known to both the speaker and the listener. Exophoric reference terms are commonly used in English expressed in terms of ‘it’, ‘that’, ‘this’, ‘those’. The utterances in this conversation take place between two people in the same room who can see the item being referred to exophorically. The use of exophoric referencing is a common occurrence in normal conversation and particularly in this context where the participants in the
conversation are collocated within earshot of each other, in the same room, and able to visually perceive the items being referred to (noting that this conversation is intercepted by listening device).

Of significant concern with this example is the translator’s use of the word ‘thingy’, which was cited by the police informant in this trial as being a code word for drugs. The use of ‘thingy’ in data sample 1B defies explanation other than the word is seemingly used indiscriminately in place of reference words where the translator is uncertain of what the item being referred to actually is. The word ‘thingy’ as it appears in the translated transcript is not justified at any level of transference and does not contribute to textual cohesion in the English translation.

The use of ‘thingy’ in this segment of the translated transcript is assessed as unjustified and renders the translation awkward, ambiguous and lacking coherence. The evidence provided by the police informant in this trial that ‘thingy’ is a code word for drugs carries with it major implications for the way the translated transcript is received and assessed as evidence by the jury. Inappropriate use of ‘thingy’ in translated transcripts represents a significant distortion in translation and will be discussed further in this thesis.

Data sample 1D
Contains examples of distortion caused by translator interference and distortion of exophoric referencing.

<table>
<thead>
<tr>
<th>Source text</th>
<th>Không-cô-máy-dâu,-xiu-xiu-à,-nó-cào-chút-xiu-à.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literal translation</td>
<td>Not-have-much-at-all,-little-little-(particle),-he/she-scrape-little-bit-(particle).</td>
</tr>
<tr>
<td>Translated transcript</td>
<td>No thingy, he scratched a little bit.</td>
</tr>
<tr>
<td>Proposed alternative translation</td>
<td>Not much at all, just a bit, he/she scraped a bit (off).</td>
</tr>
</tbody>
</table>

Analysis
The source text should not have caused any problem for translation; however significant distortion is noted in this segment of the translated transcript. The translator has again chosen to use ‘thingy’ instead of translating the ellipsis that refers to the ‘little bit’ contained in the rheme in the previous statement at Data sample 1C. It appears that each time the speaker uses words or terms referring to an unknown item, that is, a reference word, the translator has chosen to use ‘thingy’. This gives the impression to users of the English transcript that the parties involved
in the communication are purposely using code words to disguise what they are referring to; however, analysis of the source text reveals this is not the case.

The word ‘cạo’ can be ‘scratch’, ‘peel’ or ‘scrape’ in English. It is proposed that the word ‘scrape’ is a more appropriate word to use in this context rather than the word ‘scratch’; however, this is assessed to be a minor issue.

The major problem with this segment is the difference in meaning conveyed in English. The jury was told that ‘thingy’, as alleged by the Crown, is a code word for drugs, yet there is no evidence in the Vietnamese text that such a code word or any other word exists that can be translated as ‘thingy’ within the context of the sampled utterance. As one might deduct, the jury is likely to understand this sentence, as expressed in the translated transcript, to carry the meaning ‘No drugs, he scratched a bit’. This is a significant departure from the proposed alternative translation where transference of the words ‘Không có mây dâu’ is clearly and more appropriately translated as ‘Not much at all, just a bit, he/she scraped a bit (off)’, which conveys the ellipsis linked to the lexical chain of ‘a bit’ contained in the rheme of the previous sentence at Data sample 1C.

In addition, the Vietnamese word ‘nó’ is not gender specific, yet the translator of the translated transcript has chosen to use the male gender pronoun ‘he’ to designate the third person being referred to in the utterance.

It is assessed that use of ‘thingy’ in the translated transcript is not justified and has taken on a meaning of its own. This follows evidence provided by the Crown that, in this context ‘thingy’ means one ounce of heroin. While it is not argued here whether the exophoric referencing the participants used in communication relates to drugs, it is argued there is no indication in the source text that a Vietnamese word corresponding to the English word ‘thingy’ is evident in this context. This can only lead to the deduction of unjustifiable intervention on the part of the Vietnamese translator for reasons unknown to this researcher. However, a theory can be constructed in relation to use of this word, which will be discussed in Chapter 5.
Data sample 1E

Contains examples of significant distortion of meaning, unjustified additions, and unjustifiable translator interference.

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Literal translation</td>
<td>Speak-you-like-that,-few-these-probably-I-weight-excess.-Excess-little-bit…-tired-too,-mum.</td>
</tr>
<tr>
<td>Translated transcript</td>
<td>To tell you that bro, these I weighted and they may have been weighted with extra. A little bit extra but (mumbles) I was so tired, damn it.</td>
</tr>
<tr>
<td>Proposed alternative translation</td>
<td>Well, having said that, perhaps I’ll add extra to the weight of these ones. Just a little extra…God, I’m so tired!</td>
</tr>
</tbody>
</table>

Analysis

In this utterance, the source text is linked to a preceding utterance contained at Data sample 1D where reference is made to an item which is deficient in some way as shown in the proposed alternative translation: ‘Not much at all, just a bit, he/she scraped a bit (off)’. However, due to deficiencies in the translated transcript shown in Data sample 1D, the lexical chain is broken rendering an incoherent sequence of individual utterances. The phrase ‘Nói anh vày dó’ contains anaphoric reference words ‘vày dó’ which draw reference to the preceding utterance at Data sample 1D, and is translated in this extract of the translated transcript as ‘To tell you that bro’ where the link is arguably vague and potentially lost. As shown in the proposed alternative translation, ‘Well, having said that …’ representing the theme of the sentence in this example, is proposed as a more appropriate translation essentially linking the idea expressed in the previous utterance.

The appearance of the word ‘bro’ in the translated transcript is indicative of unjustifiable intervention based on the translator allowing extra-linguistic knowledge of the context to influence his/her choice of register. It is commonly known that the word ‘bro’ is synonymous with other colloquial personal pronouns used by youth in a very informal sense in English. In this case, the translator has chosen the word ‘bro’ as an equivalent for the Vietnamese personal pronoun ‘anh’ which has many meanings in Vietnamese. ‘Anh’ is a personal pronoun commonly used to address a Vietnamese male (the hearer) who is usually of similar age to the speaker. It may also be used to address a male sibling (older brother). It is also a popular given name for Vietnamese males and females. However, it does not in any form carry the informal and colloquial meaning as the term ‘bro’ does in English. It is argued here
that the word ‘bro’ has been selected because it situates well within the vernacular of drug-related culture and is not simply a choice of a lexical equivalent to bring across equivalence of register. The most direct and correct translation in this instance is simply the word ‘you’. This can be seen as a failed attempt by the translator to produce a calqued translation of the Vietnamese word ‘anh’ based on an assumption of context and the assumed relationship between the participants of the conversation. Having discussed the theme of this sentence, the rheme will now be discussed which is represented by the remainder of the sentence.

The rheme of the first sentence is a rhetorical proposition expressed by the speaker with the intention of compensating for the ‘loss’ referred to in Data samples 1C and 1D. Reference to ‘These ones’ contained in the rheme forms part of a lexical chain that links dialogue analysed at Data samples 1A through 1E where other items, presumably of the same category, are discussed.

When considering the translated transcript as produced by the LET, it can now be seen that the translation is both ambiguous and misleading. It can imply that someone else may have increased the weight of the items for reasons that will remain unknown to the reader or hearer of the translated transcript. The connection of ideas associated with ‘losses’ referred to in the preceding sentences and compensatory measures referred to in this statement, will not be recovered through textual cohesion by means of logical progression through a lexical chain due to the source text having been translated incorrectly. The next sentence appearing in this sample will now be considered.

In the second sentence of Data sample 1E, it is clear the speaker is reassuring the hearer that it is okay for him/her to add the little bit extra to ensure the items meet a predetermined standard of weight. Then the translator adds a comparative conjunction ‘but’ followed by a note that a portion of text is unrecoverable by inserting ‘(mumbles)’. This is followed by ‘I was so tired, damn it!’

The translated transcript again contains a distortion of meaning. Locutionary, illocutionary and perlocutionary meanings are described as what the speaker intended to mean, what the hearer interpreted the utterance to mean, and how the hearer acted upon what they heard (Austin 1962). In this utterance, the speaker simply reaffirms that he/she is adding ‘just a little extra’. While this locutionary meaning actually reflects the action being undertaken of adding a little extra, the
illocutionary meaning is that it is justified given the previous situation of losses incurred when dividing. The perlocutionary act is the hearer’s acceptance of the reasons it is justifiable to add extra. The speaker then makes a comment that he/she is tired, by saying ‘mệt quá, mê.’ While ‘mệt quá’ can be translated as ‘very tired’ or ‘so tired’, the word ‘mê’ here is an idiomatic expression rhetorically appealing for sympathy from a caring or sympathetic entity. In English, this appeal made by the speaker should be represented more appropriately by idiomatically referring to ‘God’ as it appears in the proposed alternative translation as ‘God, I’m so tired’, whereas ‘mother, I’m so tired’ would sound odd in English. The expression ‘Damn it’ as used by the translator is an exclamation of frustration and anger and carries a completely different meaning to that intended by the speaker. The translator has failed to accurately transfer the meaning of the Vietnamese idiomatic use of the word ‘mê’ as it is used in this context.

**Summary: Case study 1**

The sampled utterances (above) reveal significant distortions in meaning. They highlight the high risk of jurors drawing incorrect inferences based on their understanding of the evidence presented in the form of a translated transcript in English, and particularly having been informed, by an expert witness (police officer), that ‘thingy’ means drugs. It is clear that aside from the errors contained in the translated transcript the translator has had difficulty applying a consistent approach to the translation, rendering the translated transcript nonsensical. Forensic translation requires consistency in relation to logical coherence of the translation at all levels of text (Darwish 2012, p. 67). The sample translations failed to logically connect at lexical, sentence and text levels. The translated transcript presented in Case study 1 was provided as an aid to the jury and was agreed by the Prosecution and Defence counsels to be accurate beyond reasonable doubt.

**4.2.3 Case study 2**

This trial was heard in the County Court of Victoria and involved four defendants each accused of importing a prohibited border control drug, namely heroin, of a marketable quantity. A marketable quantity of heroin is defined as two grams or more in accordance with the *Criminal Code Act 1995* (Cwlth), s. 314(4). Observations commenced in mid 2012 with the trial judge hearing legal argument from four defence barristers seeking severance orders for their respective clients on
the basis of potential prejudicial effect in accordance with the *Evidence Act 2008* (Vic.), s. 97, s. 98, and to seek a fair trial for each client. Counsel representing the Director of Public Prosecutions argued for cross admissibility of evidence due an instance of coincidence and tendency evidence, further arguing that the probative value substantially outweighs any prejudicial effect. The Crown maintained that a ‘system’ of drug importation was evident linking the four accused who were charged with importing heroin into Australia. The Crown further argued that the evidence it relied upon would allow the jury under His Honour’s direction to be able to draw conclusions based on the evidence presented without the risk of prejudicing the interests of the four accused each receiving a fair hearing in the one trial.

After considering the legal argument put by counsels, His Honour ruled against the severance applications and ruled that the trial would proceed with the four accused appearing at the same trial heard by a 15-member jury. This ruling was based on His Honour’s judgement that the probative value would substantially outweigh any prejudicial effect, and that he would be able to effectively instruct the jury that each count heard in the trial was to be treated as a separate trial within itself.

The trial commenced with the 15-member jury in attendance. Opening statements were heard from the prosecution followed by each of the four defence counsels. The court heard that the prosecution would call on a key witness who had allegedly recruited the four accused to import a border controlled substance, namely heroin, of a marketable quantity into Australia from Vietnam. The defence counsels each opened with statements suggesting that their clients would be found innocent of the charges put, and that the credibility of the evidence presented by the prosecution would be shown to be unreliable.

Evidence-in-chief consisted mainly of statements provided by a witness who was previously found guilty of importing 2.265 kilograms of heroin and who had recently completed his sentence. This witness had undertaken to assist the Director of Public Prosecutions with its investigations in exchange for a reduced sentence. The witness admitted to having recruited members of the Melbourne Vietnamese community to import heroin by means of concealing it internally in the form of ‘pellets’. Pellets as described in this trial refer to small packages of heroin usually packaged in balloons and/or condoms, oval in shape, and of a size that can be inserted and concealed in the anus or the vagina.
The Crown presented telephone intercept and listening device recordings in the Vietnamese language, which were played and heard by all in attendance in the courtroom. The playing of each recording was followed by a reading to the court of the corresponding translated transcript by an independent court official. It did not take long for the alleged accuracy of the contents of the telephone intercept transcript to come into question.

**Results**

The Defence argued inconsistencies were evident in the translated transcripts, and in the absence of the jury a voir dire (a hearing within a trial) took place to determine the admissibility of evidence. At the voir dire, the LET responsible for translating the recorded conversations from Vietnamese into English was called to give evidence in relation to the disputed accuracy of the translated transcripts. It was found that the transcripts contained serious errors in some areas, and the judge instructed the Crown, in consultation with the Defence, to rectify the linguistic problems identified. Defence barristers relied upon court interpreters to help them make sense of ambiguities detected in the transcripts. There were also problems concerning the communication of intended meaning during examination and cross-examination of the key witness (assisted by Vietnamese court interpreters), resulting in one defence counsel seeking to have the jury discharged on the grounds that the translated transcript from Vietnamese presented during the preliminary trial was inaccurate. His Honour denied the request noting that, being in the fourth week of the trial, these issues might be resolved so the trial could proceed.

The trial was delayed by one day due to inconsistencies detected in the translated transcripts, which needed to be resolved. Problems of ‘attribution’ in terms of Vietnamese names, including those of the accused caused ambiguity and uncertainty during the trial. This became apparent soon after the trial commenced. The prosecution provided a chart to his Honour, all counsels and the jury that contained photographs and names of the Vietnamese people involved. This researcher did not have access to this document. It is this author’s assessment that some level of confusion was likely to exist in the minds of jurors in relation to who was being referred to when counsels put questions and propositions and when transcripts were read out in English due to mispronunciation of names by counsel and attribution errors contained in the transcripts.
The frequent and seemingly indiscriminate use of ‘thingy’ was heard when the translated transcripts were read to the court. The Prosecution again alleged ‘thingy’ meant drugs.

**Summary: Case study 2**

The audio recordings played to the court in this trial were assessed to be of poor audio quality and difficult to hear and comprehend from an observer’s position in the courtroom. The Vietnamese court interpreters, the witness and the accused people were issued with headphones when the audio recordings were played, and were better placed to comprehend and respond to what was said in Vietnamese. For this reason, the Vietnamese recordings were assessed to be not of sufficient quality to be used as samples for discourse analysis, as was demonstrated in Case study 1. The poor audio quality of the recorded utterances represented a high risk of this researcher potentially mishearing the utterances in Vietnamese. Fortunately, enough data in relation to the translated transcripts were captured in the court transcripts of this trial, the results of which are contained in Tier 3 – Court transcripts (below).

4.2.4 Case study 3

Case study 3 involved observation of a trial involving importation and trafficking of heroin where the Prosecution used as evidence translated transcripts from Vietnamese into English. Unfortunately, the court made a decision not to play the audio recordings of intercepted Vietnamese conversations during the hearing, as there was no requirement for a non-English speaking Vietnamese witness to give evidence. Initially it appeared observation of the trial would reveal limited primary data for this phase of data collection. However, it became apparent during the trial that the translated transcripts read to the court contained significant errors. The LET who had produced the transcripts was subpoenaed to give evidence as an expert witness in a voir dire held during the trial. Complications with judicial procedures required discharge of three juries during the course of the trial, requiring the evidence provided by the LET to be heard by three juries. This provided ample opportunity for collection of data in relation to the questions put to the LET and the responses heard.

The purpose of the voir dire was to determine the alleged accuracy of the translated transcripts. The Prosecution and the Defence examined, cross-examined
and re-examined the LET who had been indicted as a witness. The witness said he held a NAATI professional level qualification in interpreting but not in translation.

Results

Immediately before the LET proffering evidence as an expert witness, His Honour addressed the jury:

Sometimes an expert is called, such as [name withheld] and there’s an issue about their expertise because experts can give evidence of opinion. In this case there is no issue about [name withheld] expertise as a translator from the Vietnamese language into English and so you may accept his statement of opinion in relation to that area as evidence. Thank you.

The witness gave evidence that he translated audio recordings of conversations acquired through listening devices and telephone interception for the police. In response to Prosecution questioning, the witness said he had started interpreting work in 2003 and was a native speaker of Vietnamese.

During cross-examination by the Defence, the witness was asked to confirm that he was a professionally accredited interpreter, to which the witness replied ‘yes’. The witness was then asked if he was a professionally qualified translator, to which he replied ‘No I’m not’. It was then put to the witness that his skill was in the spoken word; interpreting, to which the witness replied ‘yes’. The defence counsel confirmed with the witness that interpreting skills are distinctly different from those required of a translator who translates written documents. The witness replied ‘Yeah that’s right’.

The defence barrister put to the witness that ‘perfect equivalence’ is rarely achieved between two distinctly different languages like in the case of English and Vietnamese. To this proposition the witness agreed. It was then put to the witness that Vietnamese terms of address are quite complicated and don’t often directly translate into English, to which the witness agreed. The defence barrister then put to the witness that there are two sorts of approaches taken in interpretation; the ‘source text’ approach where the interpreter sticks close to the source language and the ‘target language’ approach where meaning is conveyed for the target audience. The witness agreed to this proposition. When asked which approach the witness uses when producing translated transcripts of conversations obtained from listening devices and telephone interception, the witness said:
I think it has to be like a mix between the two because our task is when you say interpreting or translation we try to bring the meaning across as close as possible and it has been done – with all translation is a meaning base so we try to bring the meaning – one language to the other. Sometimes it cannot – we cannot do like a literal translation because if we do that it will have no meaning in the target language.

The defence counsel put to the witness that ‘these calls are almost a literal translation of what’s in the source language?’ In response, the witness replied ‘Like I said before, we try to translate it as close as possible’.

The defence counsel then said, ‘Can I ask you what “thingy” means?’ To this the witness replied, ‘We translate the word “thingy” when a person says something we cannot define the actual meaning of the word, because sometimes they – they use the word in Vietnamese “-être” or something like that’.

His Honour asked the witness to spell the Vietnamese word ‘être’. The witness added, ‘Ah it – ah ay, and sometimes we cannot – what it means – so thingy for something that we are – we are not certain of what the subject or the object is about’.

The defence barrister then said ‘So they’re not necessarily using a specific word that’s been translated into – interpreted into the word, “thingy”? ’ adding ‘You’re not sure what “thingy” – the “thingy” is?’ The witness replied:

And it has to come back to the ah – so when you um – because when you ask the word “thingy”, it can be anything. It has to go back to the context of that particular call of the conversations. Um but most of the time I – I would say that ah something – sometimes we could not define or know what the meaning of it so we use that word, just for something or someone or could be whatever.

The defence barrister continued, ‘So it’s really – let me ask you this and see if I can clarify that. Is that because it simply doesn’t or it’s not capable of being interpreted from Vietnamese to English in any sensible way?’ To this the witness replied:

Um, I think because sometimes the person’s – not all the time but sometimes in the conversations people use it. It’s the way they – they speak. Other times it could be the case that they want to conceal some meaning that – they don’t want other people to know. They also use that as well.
The defence barrister moved on from asking questions about use of ‘thingy’ to asking about other parts of the translated transcript in dispute. It was suggested that in the transcript where it was written ‘You have then many times and it can be that’ should be ‘Then on Monday night we might’ and within the wider context of the phrase it should read ‘If that guy said unchanged, then on Monday we might have to go to the bank.’ The witness was asked to listen to the audio recording again. After the recording was played to the court three times upon request of the LET, the witness agreed that the transcript should be corrected as the Defence had proposed.

The defence barrister also challenged the transcript where it was written ‘The glass make the appointment’ suggesting that the correct translation is ‘If you want – if you want to go to the pokies, I bring it and hand it’. After the recording was played to the court twice at the request of the witness, the witness agreed that the transcript should be amended as suggested by the defence counsel.

The defence barrister challenged a further entry in the same call written as ‘He is not happy’ suggesting that the correct translation is ‘our theory is we say it’s not strange’. The audio recording was played seven times at the request of the witness who was still unsure of what was actually said but the issues appeared to have settled on a translation of ‘but why is it strange?’. Trying to get the witness to confirm the accuracy or otherwise of what had been translated involved numerous exchanges between the witness, the defence barrister, the Prosecutor and the trial judge. It appeared as though enough time had been spent on that particular utterance and the defence barrister moved on to the next item of the translated transcript in dispute.

The next utterance the defence barrister challenged was ‘I am currently in Footscray here’, which the Defence suggests should read ‘I am at the pokies here’. After playing the audio recording to the court twice upon request of the witness, the witness agreed that he had made an error in the transcript and it should be amended as the Defence suggests. The witness explained that because of the Vietnamese accent, the words ‘Footscray’ and ‘pokies’ sound similar.

Again, the defence barrister challenged a further utterance, ‘No does not run’, suggesting that it should read ‘No not finish’. The witness agreed with the proposed correction to the transcript.

The defence barrister then drew the witness’ attention to a part of the transcript where it was written ‘Lad [Vietnamese name withheld]’ and asked how it was
determined that the person was a male. The witness replied that when he hears the speakers refer to someone as ‘thang’ then he used the word ‘Lad’ to indicate gender.

Further the defence barrister challenged the words contained in the transcript ‘want a bit?’ suggesting that it should read ‘kilogram’ or ‘kilo’ or ‘KG’ and that where it is written ‘one piece’, it should read ‘one of’. After listening to the call, the witness insisted that the words ‘một cái’ in Vietnamese could mean ‘one piece’. The defence barrister put it to the witness that ‘một cái’ means ‘one of’ and the Vietnamese words ‘một miệng’ mean ‘one piece’ and provided an example of how the Vietnamese classifier ‘cái’ is normally used in Vietnamese. The witness stated that ‘this depends on the regions (in Vietnam) where you use that word’, adding that ‘một miệng’ and ‘một cái’ are very much the same. After some further defence barrister challenges, it was clear the issue was not going to be resolved due to the witness’s claim that the two terms sometimes share a common meaning.

Another utterance in the translated transcript the defence barrister challenged was ‘I took it there. I handed. You said it clearly in the morning so I went to take cake’, and it was suggested that the last two words of the latter sentence should read ‘take care’. After playing the audio recording to the court four times at the request of the witness, the witness agreed that the transcript should be amended to read ‘take care’. The Prosecution alleged, during this trial, that the word ‘cake’ was a code word meaning heroin.

The defence barrister then asked the witness if the Vietnamese word ‘đồ’ can mean ‘thing’, ‘object’ or ‘stuff’, to which the witness replied ‘yes’. When asked if the witness had translated the Vietnamese word ‘đồ’ as ‘gear’ as it appears in the translated transcript, the witness agreed that he had. The defence barrister put it to the witness that he chose to use the word ‘gear’ because of the context in which the witness knew the conversation was taking place; that is, a police drug operation. The witness insisted that there are a few synonyms like ‘stuff’ or ‘things’ but simply chose to use ‘gear’ instead.

When re-examined by the prosecutor, the witness stated that in all his years of interpreting for police he had never heard the Vietnamese word for heroin used in intercepted conversations. The witness also agreed with the proposition that there are difficulties in translating idioms and things of that nature, and that there are cultural differences that preclude perfect equivalence.
The prosecutor raised the use of ‘thingy’ in transcripts and proposed to the witness that it can mean different things, to which the witness agreed. The prosecutor asked, ‘when you translated “it” into “thingy” … in fact in Vietnamese are different words being used from time to time that you’ve translated into “thingy” or is it just one word or two words?’ The witness replied:

Sometimes we have different Vietnamese words we use, but basically the appropriate way is when we don’t know for sure what that object is or are and when they use that word and we don’t know for sure, then I put the word ‘thingy’, because sometimes they will say, ‘áy’ – they just use the word ‘that one’ or ‘cái’. It could mean anything so I just put the word ‘thingy’ meaning that we are not so sure of what they are talking about.

The witness, under further questioning about ‘thingy’, said it is a generic word used when unsure about what the participants in the intercepted conversation are referring to. The witness added that ‘when they refer to something, but I don’t know the actual meaning or the meaning of that object or that thing, were conceal, then I have to use the word “thingy”.’ The witness agreed to the Prosecutor’s proposition that he could equally have used the words ‘something’ or ‘that’ and that ‘thingy’ is just a generic word being ‘used in a very broad way’. The witness added,

Ah when – when the meaning – when um – I’m not – I’m unsure about the meaning or the people who are involved in that conversation did not want to reveal what they were talking about, then they will mention a word so I have to choose the word ‘thingy’.

During further cross-examination about ‘thingy’ the defence barrister asked if it ever gets to a stage where there is a word in Vietnamese that does not translate into English where ‘thingy’ is used, to which the witness replied ‘no’. When an example was put to the witness where ‘thingy’ might be used instead of ‘something’ or ‘thing’, the witness again said it depends on the context of the conversation, and added ‘but if they refer to, let’s say, in the Vietnamese when they say “cái đó” …’ At this point His Honour interjected and proposed: ‘And you can either translate it as “that one” or “that thingy”, because we don’t know what “that one” or “cái đó” is.’ The witness replied ‘yes’.

The defence barrister further proposed that,
For example, if I said, ‘Last night when we took that one.’ That’s where ‘thingy’ would fit in? In other words it has a specific meaning of ‘that’ where someone is not being explicit as to what they’re talking about?

The witness replied ‘yep’.

**Summary: Case study 3**

The voir dire heard during Case study 3 unexpectedly verified that LET arbitrarily use ‘thingy’ in translated transcripts. The LET called as an expert witness and who had translated the transcripts in question stated that LET use ‘thingy’ when they have difficulty finding appropriate lexical equivalents for reference words heard in Vietnamese and where context is undetermined. Through examination, cross-examination and re-examination it became clear that ‘thingy’ is used wherever and whenever the person producing the transcript is unclear about what or who is being referred to or what action is taking place. On two occasions during questioning, the witness said that when it is unclear, ‘we have to’ use the word ‘thingy’. This may indicate that there was an expectation in the workplace that the translator would use ‘thingy’ where there is uncertainty about the object being referred to in the source text (in this case, Vietnamese).

### 4.2.5 Additional trial observations

Three additional trials heard in the County Court of Victoria were observed, on an opportunity basis, in early 2014 following observation of the three case studies. The three additional trials observed all related to importation into Australia of commercial quantities of heroin and involved translated transcripts from Vietnamese to English. A general comment is made about a common theme found across the additional trials and a narrative describes a significant outcome of one of the trials.

**Results**

Common to all three trials was the frequent use of the words ‘thingy’, ‘gear’, ‘lass’ and ‘lad’ in the translated transcripts. Other terms, including the unusual use of personal pronoun descriptors such as ‘paternal grandfather’ and ‘younger sister’, were also used. In one of the three additional trials observed, the Vietnamese personal pronoun ‘minh’ was identified as a word ambiguously translated in the transcripts. This caused concern for the trial judge in the pre-trial hearing when His Honour noted inconsistencies in the translated transcript concerning the
interchangeable use of the words ‘we’ and ‘I’ during the reading of the translated transcripts to the court. In this trial the Crown was pursuing conspiracy charges against the accused, so use of the inclusive pronoun ‘we’ translated from the Vietnamese word ‘mình’ instead of the word ‘I’ had a significant bearing on the outcome of the pre-trial hearing in determining whether the trial should proceed.

During the hearing, the judge ensured that where there was doubt, an attempt was made to clarify what was meant in the intercepted calls when the word ‘mình’ was used. This was achieved through examination and cross-examination of a witness giving evidence who was a party to the intercepted conversations. It was established that the transcripts contained numerous instances where the words ‘we’ and ‘them’ were either translated without regard to the alternative context where the word could also mean ‘me’, ‘I’ or ‘you’. In addition, the court established that the transcripts contained significant additions and omissions as advised by two experienced and independent court interpreters.

His Honour informed the Prosecution that the transcripts would not be accepted as evidence unless discrepancies relating to the Vietnamese word ‘mình’ and other errors identified in the translated transcripts were sufficiently addressed, adding that it would be difficult for any jury to be able to draw any other conclusion other than what was heard or read from the translated transcripts in their present state. Notably, His Honour commented that the seemingly arbitrary meaning assigned to the word ‘mình’ throughout the transcript reminded him of the word ‘thingy’ as it had been used in previous trials. His Honour stated that in a previous case, the Prosecution alleged that ‘thingy’ meant drugs. His Honour further stated that ‘thingy’ is not a code word for drugs at all, and noted that it again appears in the translated transcripts before him at the time of making the comment about the word ‘mình’. The Prosecutor said that it depends on context, to which His Honour replied that it was a matter of debate.

Up until this point, a defence barrister representing another accused (charged with trafficking heroin in the same trial) raised concerns that the transcripts may not be as accurate as they had first thought they were. His Honour suggested that the defence barrister finds some way of having the intercepted recordings and associated translated transcripts checked for his client. The barrister made the comment that there were insufficient resources available to his client through Legal Aid for the
transcripts to be checked by an independent interpreter. In reply, His Honour suggested that the barrister finds a way of doing so in the interest of the accused receiving a fair trial. Approximately two hours later, the same defence barrister informed His Honour that he had sourced funds through Legal Aid to have the recordings and associated transcripts checked by an independent interpreter.

As a result of discrepancies noted in the transcripts and following negotiations between the Prosecution and the Defence, the defendant facing conspiracy charges of trafficking eventually pleaded guilty to the lesser charge of aiding and abetting. It is assessed as highly likely that the evidence the Prosecution presented in the form of translated transcripts contained sufficient ambiguity as to weaken the Crown’s case to progress with charges of conspiracy. This was largely attributed to how the word ‘mình’ had been incorrectly translated in the transcripts used as evidence in the pre-trial hearing.

Summary: Additional trials

Observation of additional trials to the three case studies selected for this research provided further evidence of deficiencies in translated transcripts containing indications of systemic errors relating to alleged code words for drugs, in particular the word ‘thingy’. The need for quality control measures to check the alleged accuracy of transcripts was demonstrated in this section.

4.2.6 Summary

Observations of the three case study trials as well as a further three trials revealed that significant and frequent discrepancies appear in translated transcripts presented for use as evidence in drug-related trials. The researcher observed lengthy discussions and frequent concerns raised about the accuracy and meaning attributed to the content of translated transcripts, particularly relating to the alleged meaning of drug-related code words and phrases. Comparison of what was heard in the audio recordings with what was read to the court from the translated transcripts in Case study 1 revealed significant errors of distortion, omission, unjustified additions and unjustifiable translator interference. These errors resulted in significant departures of meaning and included frequent and seemingly arbitrary use of the English word ‘thingy’ in the translated transcripts frequently alleged to mean drugs. A voir dire conducted during the Case study 2 trial attempted to clarify issues of gender.
attribution as they appeared in the translated transcripts and ‘thingy’ was again alleged to mean drugs.

The voir dire held during Case study 3 revealed that the LET who had prepared the translated transcript fluctuated between adopting a literal and a free approach to translation in an effort to convey intended meaning. When giving evidence as an expert witness, the LET did not cite a particular methodology or theory that is applied to preparing translated transcripts. The LET also explained that ‘thingy’ is used when the subject or object is not made explicit in the source text, in which case the witness said, ‘I have to use the word “thingy”.’ Further, when unsure of the intended meaning, or when the speakers were assumed to be talking in veiled speech, the LET said, ‘I have to choose the word “thingy”.’ The translator appeared to be very cautious when proffering his expert opinion, and therefore, to have said, ‘I have to use the word “thingy”’ in response to two separate questions may indicate that he felt he had no choice but to use that word due to established norms or procedures associated with producing translated transcripts.

The word ‘gear’ as it had been translated was also brought into question with the proposition that it is synonymous with many words such as ‘stuff’ and ‘things’ that are also lexical equivalents to the Vietnamese ‘đồ’ uttered by the accused.

Gender attribution was also noted to be an issue of contention. Non-gender specific pronouns, such as the Vietnamese words ‘nó’ and ‘mình’, resulted in the veracity of the translated transcript being brought into question. Two of the three case studies included a voir dire where the translator of the translated transcripts was subpoenaed to testify as an expert witness to clarify discrepancies found in the transcripts. All nine of the proposed changes the defence counsel put to the translator during the voir dire of Case study 2 were implemented.

Observation of these trials provided information supporting the proposition that judicial processes are adversely affected by significant errors contained in translated transcripts. In an effort to identify potential causal factors that contributed to the errors, key areas of investigation were identified to form the structure of questionnaires and semi-structured interviews conducted at Tier 2.

Trials commence from a point where the translated transcripts are agreed by the Prosecution and the Defence to be accurate; it was therefore determined that the skills and training of translators/interpreters who prepare transcripts would be a key
area of investigation. In addition, alleged drug-related code words the accused used were very important to the Crown’s case and the evidence it relied upon. Noting that making sense of code words relies upon the intelligence process, the provision of intelligence support/background information available to translators of transcripts was established as another key area of investigation in Tier 2.

The researcher also decided to investigate the working environment to determine whether translated transcripts are influenced by the context in which translators work. The voir dire at Case study 3, where the translator said that in certain circumstances he ‘had to choose’ the word ‘thingy’, suggests there may be at least some workplace related influence on way translated transcripts are prepared for evidentiary purposes.

The evidence drawn from observation of the trials revealed that translated transcripts fluctuated from good to nonsensical English, therefore, translation style and accuracy formed another area of investigation to be covered in Tier 2.

4.3 Tier 2 – Questionnaires and interviews

4.3.1 Introduction

The results obtained from observing trials in Tier 1 provided information from which the subject areas to be covered in the questionnaires and interviews forming Tier 2 of data collection were established. These areas were:

- skills and training
- intelligence support
- working environment
- translation style and accuracy
- unique terminology and code words.

Tier 2 contains results of questionnaires and interviews with key stakeholders involved in preparing and/or using translated transcripts. Judicial officers were interviewed to collect data on their views about the quality of translated transcripts and what effect disputes over alleged translation accuracy may have on the judicial process. They were not asked to complete questionnaires. Barristers and court interpreters completed questionnaires and participated in interviews responding to questions about the quality of translated transcripts and their use in trials relating to
serious and organised crime. LET completed questionnaires and were interviewed about preparing translated transcripts for evidentiary purposes, and supporting law enforcement operations. They were also asked to comment on intelligence support and what influence the working environment might have on the translation process.

The researcher felt it necessary to compare data collected from the non-traditional security environment of law enforcement with data collected from the traditional military sector. CTL and CTS were interviewed to collect data relating to transcription of LOTE from electronic surveillance operations for strategic and operational purposes. The purpose of comparing the results from these two sectors of security (law enforcement and the military) was to identify differences in approaches to translation to determine causal factors relating to errors found in translated transcripts used for evidentiary purposes.

Quantitative data received from questionnaires are shown in Figures 4-1 to 4-19 to provide an appreciation of the initial responses provided by participants prior to interviews. It was found that the quantitative data were consistent with the qualitative data received from interview participants.

4.3.2 Skills and training

This section focuses on the skills and training needed to produce translated transcripts from LOTE. Preparation of translated transcripts is described as an interdisciplinary activity requiring application of translation and interpreting skills (NAJIT 2009, p. 3). The results of observing trials at Tier 1 indicate there might be deficiencies in skills and training. Darwish has said that ‘in most situations’ translators are tasked to produce translations for evidentiary purposes who have not been appropriately trained, have significant biases or are ‘simply incompetent’ (2012, p. 19). The area of skills and training was investigated in both the law enforcement and military sectors to determine the veracity of this claim. In order to identify differences between LET and CTL in skills and training, it was necessary to collect and compare data relating to the perspectives held by LET, CTL and CTS. This was achieved by inviting LET and CTL to complete questionnaires and to participate in interviews; CTS participated in interviews only.

Judicial officers, barristers and court interpreters were not invited to comment on issues directly related to transcription skills and training. It was determined that
LET, CTL and CTS were best placed to provide comment in this area. LET participants were community interpreters and/or translators holding NAATI professional accreditation in Mandarin and/or Cantonese, Indonesian or Vietnamese. CTL interviewed held Defence Force School of Languages qualifications in Russian, Indonesian, Malay or Pidgin English. Each CTS had extensive experience as a supervisor of cryptologic linguists in a diverse range of operational environments. Although they did not have professional qualifications as translators or interpreters, each CTS had received some degree of training in a LOTE.

**Questionnaire results**

LET and CTL were asked if they thought translating and interpreting skills were necessary in order for them to effectively transcribe intercepted communications from spoken LOTE directly to written English. The purpose of the question was to gauge how each group viewed the relevance of translation and interpreting skills to transcription tasks. When answering this question, participants were asked not to take into account skills provided through specialised training for transcription purposes. This was explained to participants during the data collection process.

LET returned a range of responses in relation to how relevant they thought NAATI accreditation standards are to the skills required for transcription tasks. Responses ranged from no relevance at all to mostly relevant. Acknowledging that transcription is a specialised skill, CTL indicated that interpreting and translation skills have at least some relevance to transcription tasks undertaken for operational purposes.
Figure 4-1: Relevance of translation/interpreting skills to transcription tasks LET/CTL

Note: CTL = cryptologic linguist; LET = law enforcement interpreter/translator.

As revealed in Figure 4-1, participants agreed that general skills associated with translation and interpreting were relevant to tasks involving transcribing LOTE. However, CTL appeared to be more inclined to acknowledge the application of translation and interpreting skills to transcription tasks than did LET. The reason for this might be due to CTL familiarity with the Australian Defence Language Proficiency Rating System, which includes individual ratings for listening, reading, writing, comprehension, translation and interpreting. The NAATI system of accreditation rates candidates seeking accreditation as a pass or a fail in either translation or interpreting and does not test candidates for skills peculiar to those required to undertake transcription tasks. The results also indicate that LET feel that transcription requires skills and knowledge beyond that required of general translating and interpreting.
Figure 4-2: Access to analysis training LET/CTL

As indicated in Figure 4-2, all LET said they had not received analysis training relating to law enforcement activity. Conversely, all CTL indicated they had received formal analysis training. This result is significant; noting that analysis training for CTL is reported to be an integral part of applying context to translation, based on all available information and intelligence.

Interview results

Results from interviews conducted with LET relating to skills and training were compared with data from interviews conducted with CTL and CTS. Participants from LET had significant experience in providing operational support to police operations in addition to producing transcripts for evidentiary purposes. LET had experience relating to a range of crimes, but primarily in relation to illicit-drug activity.

LET were asked whether they thought community interpreters and translators have the prerequisite skills necessary to effectively produce translated transcripts to be used as evidence in court and to support law enforcement operations. All respondents replied that community interpreters and translators did not have the skills needed to undertake transcription tasks, adding that there is a need for specific training in preparing translated transcripts for evidentiary purposes. One respondent said they should be provided with training about the legal system and that specialist accreditation should be applied to this type of employment. A New South Wales
based LET said he had not received any training in the 13 years he has been producing translated transcripts, and that the skills he had acquired were learnt on the job. The same LET said that not even experienced court interpreters have the necessary skills to produce transcripts to be used as evidence in court. He added that a short orientation workshop on legal processes was conducted but no technical training was provided for producing transcripts.

Related to this area, LET were asked to comment on any gaps in skill level between NAATI accreditation standards and skills required to produce translated transcripts from electronic surveillance. All participants generally agreed that NAATI accreditation, while reflecting the skills required of interpreters and translators, does not focus on skills needed to produce translated transcripts. It was stated that NAATI accreditation does not, and never has, covered issues associated with the type of listening skills required of transcription tasks, noting that ‘live’ listening to listening devices and telephone calls is very difficult as it does not provide an understanding of the context of the situation.

LET also said criminals often use loose speech and slang words rendering utterances incoherent to the translator and that no training was made available in this area. LET emphasised that while they may be employed to produce transcripts, they may be professionally accredited interpreters and not professional translators, noting that written skills are quite different to interpreting verbal utterances. The point was also made that it is critical to produce proper sentences in English while retaining evidentiary value, especially in relation to grammar and tense. It was stated that current national accreditation standards are inadequate as an indication of a person’s ability to transcribe recorded utterances in LOTE to written English. Another LET commented that NAATI accreditation tests tend to focus on topical issues, and do not include colloquial and complex descriptive terms. It was added that ‘street language’ commonly used between LOTE speakers in ethnic communities is not tested. When asked how any skills gap is overcome, LET participants responded that they learn on the job and engage in self-motivated learning.

In relation to factors that may cause errors in transcripts, LET said errors in translated transcripts stem from the proficiency level of the translator producing the transcript. One LET commented that whoever produces the transcripts should be professionally qualified as both a translator and an interpreter. It was further stated
that transcription is a specialised area requiring specific training, referring to this issue as ‘a grey area’. Participants proposed that some form of quality control and language for specific purposes training may overcome these problems, and stated that more guidance needs to be provided in relation to how the transcript should be produced. The LET also stated that the translated transcript should not be tainted by the context in which it is realised, and that the methodology used to produce translated transcripts should be standardised to ensure consistency and objectivity across LET who transcribe different LOTE.

In contrast to the reported shortfall in specific training available for LET, all CTL interviewed had received specialised training that they commonly referred to as ‘applied’ language training in their respective languages. This ‘applied’ training was provided to prepare them with the skills necessary to perform transcription tasks associated with areas of military operations and other areas of national security. CTL had also received intelligence analysis training and other training relevant to task-specific activity, including specialised equipment training. All CTL agreed that native speakers of LOTE and academically trained interpreters and translators who have not received specialised language training do not have the prerequisite skills to effectively produce translated transcripts and to support operations. It was stated that ‘linguists’ engaged in electronic surveillance operations need to have analysis training, background knowledge of the target and specialised language training in order to determine context of the intercepted communication and produce accurate translations. The need for specialised training addressing jargon, slang, code words and military terms was noted as being particularly important, as is continued development of transcription skills.

All CTL emphasised the need for specialised training. Respondents described circumstances where linguists who had not had specialised training had been engaged to support operational activities resulting in less than satisfactory outcomes. It was stated that the difference between the useability of translated information produced by linguists who had not received specialised training and those who had, was overwhelmingly significant in favour of the latter. CTL stated that linguists who had not received specialised training had difficulty in determining the context of communication, resulting in very literal translations that did not convey important information of tactical and/or strategic value. It was added that non-provision of
specialised training presents a high risk of adversely affecting tactical advantage in an operational environment. One CTL, with experience in non-traditional security operations, said there would not be a need for specialised training in a situation where jargon, cover and code words were not used in communications relating to illegal activity. However, participants conceded that experience has shown that perpetrators of criminal activity rely on jargon, cover and code words to remain deceptive and to avoid ambiguity when communicating with each other. CTL provided several examples of where non-specialist linguists had failed to recognise the importance of intercepted communication resulting in missed opportunities to gain tactical advantage in operational environments.

How these skills gaps are overcome, according to CTL, is through appropriate specialised training, operational experience, mentoring and peer group support. It was stated that ‘applied’ training might take between three and six months. The specialised training for CTL was described as having components relating to translation of jargon, cover and code words relating to specific targets; target analysis; communication structures; various levels of encryption, cover and code word usage; and other relevant training modules.

Seeking to validate responses from CTL, CTS were asked how well prepared they thought CTL are to produce transcripts from LOTE for strategic/operational purposes. A general response to this question was that it largely depends upon the tasks CTL are required to perform and the availability of language qualified personnel to assist in those tasks. However, it was agreed that specialised training had appropriately prepared CTL to carry out the tasks they are required to perform.

Asked to identify the training required to produce CTL who are reliable and adequately proficient to perform transcription tasks, all CTS said that general language training followed by specialised language training is required. The specialised language training is for specific purposes; that is, training specifically designed to meet operational objectives. This training is followed by operational experience in the field where task books are used as a preferred training tool for newly appointed linguists. Training is also provided in relation to making sense of jargon, acronyms and specific genres of language use. One CTS said that depending on the amount of time between completion of training and operational deployment
‘downtime’ where language skills are not used can lead to a notable and rapid deterioration of CTL language proficiency levels.

All CTS agreed that translation and interpreting skills alone are not enough to enable linguists to effectively perform transcription tasks, which respondents described as a specialised skill. It was stated that without specialised training there would be a high risk of context being lost. It was also stated that specialised training helps the linguist resolve the tension of having to decide between a literal and a pragmatic rendering of the source text because they have a more focused awareness of the context in which the communication took place.

To further identify specific skill sets required of CTL, CTS were asked what gaps in skill level had been noted between academic accreditation standards and skills required to produce transcripts from electronic surveillance. The responses were based on participant experiences where the performance of trained and experienced CTL had been compared with military bilingual personnel who had been engaged to transcribe LOTE for strategic/operational purposes in war and warlike operations but had not received specialised training. CTS said they had experienced problems with bilinguals who had not received specialised training, as they had difficulty translating jargon and slang words used within specific contexts. They said this adversely affected the translation of meaning into the target text. All those interviewed agreed that this skills gap could only be overcome through appropriate specialised training and operational experience. One participant described this as ‘an expansive process’. The gap between academic qualifications and skills acquired through appropriate specialised training was stated as significant in terms of fulfilling objectives associated with transcription tasks performed by CTL.

In relation to operational support, LET were asked what differences, if any, there are between how they provide real-time operational support and how they produce translated transcripts for evidentiary purposes. The responses revealed that it depends on how the police wish to use the interpreter. One LET said sometimes they go with police during an operation and sometimes they remain at a remote location but still provide operational support. Another LET said it is important that interpretations are accurate so decision makers can do their job, and emphasised that it is not up to the LET to make operational decisions. All LET said they had not received specialised training relating to production of translated transcripts for either
operational or evidentiary purposes, and that experienced LET colleagues are relied upon for guidance in this area. LET further commented that while no training is provided, it was found that producing transcripts from telephone interception was easier than producing them from listening device recordings; that the audio from telephone interception was clearer and usually contained fewer instances of ‘cross-talk’. It was also stated that sometimes the conversation from recordings is ‘rubbish’, yet it becomes relevant for court purposes. It was added that how to determine this is not something LET are trained to do.

Asked what differences, if any, there are between the way CTL provide operational support and how they produce transcripts for evidentiary/strategic purposes, the general response from CTL related to timeliness. In relation to tactical situations CTL reported there is little time to consider analysis of meaning where the intercepted utterances are unclear. Therefore, it was stated that because timeliness and accuracy are of primary importance, CTL are required to provide an optimal approximation of meaning within the constraint of minimal time to realise operational effectiveness. One CTL said that, in these circumstances, they prefer to apply a literal approach and allow the decision maker to take action as they see fit. In relation to translating information for strategic purposes, it was stated there is time to carefully go through the recording and to accurately interpret the meaning of intercepted jargon, cover and code words. This process was described as involving other analysts who would help determine intended meaning contained in the LOTE communication. It was explained that the results would be fed back through the training system so applied training courses and briefing packs would contain the most up-to-date information for CTL tasked with transcribing information in any particular field of operation.

LET were asked if they had ever had any form of intelligence or analysis training to which all replied they had not. When asked if participants thought analysis training might help them produce better quality transcripts the responses varied. Most participants indicated they were unsure of what advantages analysis training would bring to the translation process.

One point of view expressed was that analysis training would facilitate an increased understanding of context, helping link the reasons the information was required. From another perspective, LET stated that analysis training is not important
if an ‘objective’ transcript is required, and that the ‘Australian Institute of Translators and Interpreters code of ethics’ must be adhered to which requires the interpreter not to assume anything and to remain purely objective. LET added that analysis training might be very relevant when it comes to analysing patterns of telephone calls. It was stated that the absence of analysis training is probably a disadvantage noting that in law enforcement the analysis and linguistic functions are kept separate. LET emphasised that any training related to the job would be helpful. One participant added that they might not need analytical skills so long as they can provide accurate transcripts to support police investigations.

In contrast, all CTL emphasised that analysis training is essential to enable them to better determine the context of utterances being translated which results in improved operational output. All participants had received specialised language and intelligence analysis training. This training was stated as being essential to effectively provide tactical and strategic support to military operations, particularly where jargon, cover and code words are used in the source text. It was stated that it greatly helps linguists determine the context in which utterances occur and therefore optimises the usefulness of the translated information to decision makers.

Probing further into the training of CTL, CTS were asked what analysis training, if any, is provided to CTL. It was stated that analysis training is provided during initial employment training either before or after language training. CTS further added that this includes an introduction to analytical thinking along with instruction on how to use software tools such as ‘Analyst’s Notebook’. It was stated that a combination of the linguistic function and the intelligence analysis process realises the output required.

CTS said analysis training provides linguists with the skills they need to produce more ‘accurate’ and ‘correct’ interpretations of the source text within a given context, and provides an awareness of analysis techniques they may be able to apply to their tasks. It was further claimed that, without this training, CTL would not be able to make sense of the overall picture and that analysis training for linguists facilitates better situational awareness. One CTS noted that while more access to analysis training and information is better, it is sometimes constrained by security clearance processes.
The final question asked of LET in this area, was if they could identify any area of training they thought might enable them to provide better quality transcripts in support of law enforcement operations. Responses included analysis training, language for specific purposes training, target-specific training, orientation training, translation and languages skills training and tailored training of how to operate within the legal system. One LET described a situation where he worked with an interpreter who was excellent at preparing translated transcripts for evidentiary purposes, but when subpoenaed to give evidence in court that same interpreter performed poorly as a witness due to poor English-speaking skills and lack of knowledge about how to respond to questions put by barristers.

LET hoped this research would bring about better training for interpreters and translators engaged to produce translated transcripts for evidentiary and operational purposes.

**Summary: Skills and training**

All LET clearly stated they felt they had not received adequate training in relation to producing translated transcripts from telephone interception and/or listening device recordings and that transcription is a specialised skill requiring specific training. All LET said that some form of language for specific purposes training was needed for preparing translated transcripts for evidentiary purposes, particularly in relation to how to defend their translations if/when subpoenaed to give evidence in court. All participants agreed that the current NAATI accreditation does not address skills required of those practitioners engaged by law enforcement agencies to carry out transcription tasks. For this reason it was stated that NAATI accreditation in interpreting and/or translation is not indicative of a person’s ability to effectively carry out transcription tasks of the type required by law enforcement agencies.

In contrast, CTS generally agreed that CTL were well trained and emphasised the importance of ‘applied’ training which delivered a language for specific purposes approach designed to prepare linguists for deployment to operational environments. It was also acknowledged that the task of transcription, that is, hearing a LOTE then translating it into written English, is a specialised skill that requires specific training and experience. Both CTL and CTS noted that analysis training and intelligence support were indispensable parts of the transcription process. The results of this
section tend to support the claim Darwish made that ‘in most situations’ translators are given tasks of preparing documents for evidentiary purposes without having had appropriate training and may ‘simply be incompetent’ (2012, p. 19).

4.3.3 Intelligence support

Intelligence support plays an important role in the military environment enabling CTL to better determine context of intercepted utterances. Translation of alleged code words and jargon used by perpetrators of serious and organised crime represents a dilemma for LET where the application of context to translated transcripts carries a high risk of loss in evidentiary value. This section reports participant results relating to the importance of intelligence support and background information. Only CTL and LET were invited to respond to questions in questionnaires relating to intelligence support. LET, CTL and CTS responded to questions concerning intelligence support contained in interviews.

Questionnaire results

Figure 4-3: Perceived advantage of intelligence support LET/CTL

As shown in Figure 4-3, the majority of LET believed their ability to perform transcription tasks would definitely improve in terms of accuracy and reliability if they had full access to intelligence data and received formal analysis training. The minority indicated their ability would probably improve. All CTL indicated their ability to translate was definitely improved in terms of accuracy and reliability.
having had full access to intelligence data and having received formal analysis training.

**Figure 4-4: Assessed level of intelligence support provided LET/CTL**

![Chart showing assessed level of intelligence support provided LET/CTL]

Note: CTL = cryptologic linguist; LET = law enforcement interpreter/translator.

The data in Figure 4-4 show that most LET rated information support as poor to very poor (no background information provided at all), with the minority indicating they receive very good access. CTL rated their access to background/intelligence information as good to excellent.

**Interview results: Cryptologic linguist**

Aspects of intelligence support were covered in the interviews to determine the importance of background information and intelligence support provided to CTL in relation to carrying out their tasks. All participants said they were appropriately briefed to carry out their tasks effectively and that access to all intelligence data is imperative to the effectiveness of the translation process. However, they noted that sometimes ample background information was available and other times very little was known about the target. Participants stated that intelligence analysis training and support greatly assisted CTL to translate coded speech and coded written text communicated in LOTE. CTL also said they had access to all available intelligence data and that it was imperative they be fully briefed in order to effectively carry out their tasks, especially where jargon, cover and/or code words are used in source text.
Interview results: Law enforcement translator

LET were asked how well they thought they were briefed to effectively carry out their tasks. The responses varied. A Vietnamese LET said, ‘we need background information but not intelligence information’. A Chinese/Mandarin LET said they had not experienced any problems but was aware that other LET had asked for more information to help them with translation tasks. An Indonesian LET said some background information is important; while a second Mandarin/Cantonese LET said access to enough background information was provided in order to effectively carry out required tasks.

LET were asked if they thought full access to intelligence data may improve their ability to provide better quality transcripts and/or operational support. The general response was that it would definitely improve their ability to provide better quality transcripts; however, one interpreter said they already receive sufficient background information and another said they are better off without it in order to remain impartial.

When asked if they thought intelligence analysis training and support might better equip LET to translate coded speech and coded written text, LET said police intelligence analysts attend intelligence conferences and compile lists of slang and code words used in this area, and those with expertise in intelligence give evidence in court. LET said provision of intelligence analysis training and support would probably be of advantage and a list of terminology would be useful. One respondent said they would be better off without full access to such information for reasons of maintaining the ethical element of translator impartiality.

Interview results: Cryptologic supervisor

CTS were asked to provide information on what type of background information or intelligence briefings they receive. They said CTL get a situational overview and an appreciation of what are predicted to be the target’s likely courses of action. They are also briefed on the subject, the target’s behavioural traits and modus operandi. They said CTL are an integral part of the intelligence/operational environment. One participant added that there have been occasions where CTL have received less information than they needed and that they could have been better briefed in relation to the situational context.
CTS were asked to identify what types of risks they thought might be associated with providing CTL with all available intelligence data. All respondents agreed that the advantages far outweigh any risk of a compromise in security. However, it was also noted that there is a risk of the linguist pre-empting the intended meaning conveyed in the source text when provided with all available information. All participants noted that CTL are security cleared ‘Top Secret Positive Vetting’ with regular reviews. It was reported that CTL are provided with all information based on a need-to-know principle regardless of whether they are tasked with providing tactical support to operations or with producing transcripts for strategic purposes.

All CTS agreed that analysis training and increased intelligence support makes a significant difference in the quality of translated transcripts and operational support provided by CTL. Analysis training and intelligence support were identified as imperative to the effectiveness of task execution by CTL enabling them to apply context to intercepted communications. However, it was noted that CTL sometimes experience difficulty in producing optimally approximated translations where the tension between literal and free approaches to translation style appears to remain problematic. In relation to code words and jargon, CTS stated that a list of code words and jargon is supplied to the linguist who also has full access to all available intelligence data in accordance with the need-to-know principle.

**Summary: Intelligence support**

Interviews with LET, CTL and CTS revealed divergent views held by participants relating to the contribution intelligence support makes to the translation process. An element of uncertainty seemed to underpin LET responses where reservation was expressed in relation to access of all available information, which may compromise their obligation to the ethical component of impartiality. In contrast CTL and CTS were clear in stating that intelligence support for the translator is imperative to the useability of the translation product. They emphasised that context needs to be applied in order for the translation to make sense.

**4.3.4 Working environment**

During the observation of trials in Tier 1, there were indications that the working environment of LET might influence the translation process. The word ‘thingy’ appeared to be a lexical unit representing part of a genre of language
peculiar to Vietnamese drug-related transcripts used for evidentiary purposes. Barristers, court interpreters, LET, CTL and CTS responded to questions in this area by completing questionnaires and/or participating in interviews. CTS did not complete questionnaires. Questions relating to the working environment were designed to elicit data from participants in relation to the degree of influence the working environment may have on the translation process and end product.

It was noted in observations of court proceedings during the voir dire in Case study 3 that the translator giving evidence appeared to have followed workplace norms in relation to use of ‘thingy’ in translated transcripts. The starting point in relation to investigating potential workplace influences was to determine if LET and CTL felt they were trusted to translate ‘accurately’ and ‘objectively’. Barristers and court interpreters were asked to comment on the objectiveness of translated transcripts used for evidentiary purposes.

**Questionnaire results: LET/CTL**

**Figure 4-5: Perceived level of trust in the workplace LET/CTL**

The results shown in Figure 4-5 reveal that LET felt they were trusted as much as anyone else in the workplace with some saying they felt more trusted than most. Similarly, all CTL reported feeling trusted as much as anyone else in the workplace to produce ‘accurate’ and ‘reliable’ translations. Responses from CTL ranged from average trust to total trust they felt others had in their translation abilities.
Figure 4-6: Degree of environmental influence on the translation process LET/CTL

Note: CTL = cryptologic linguist; LET = law enforcement interpreter/translator.

The data in Figure 4-6 show that all LET indicated they were able to produce ‘objective’ translations and that the law enforcement environment and/or operational context made no difference to how they produced the translation. CTL indicated that while the working environment may have had some influence over the way their translations were presented, this was clarified as being mainly due to the operational nature and reporting formats required of translations.

It was therefore indicated by CTL that the workplace had little influence over the translation product other than for procedural reasons. Both groups reported feeling trusted and that the working environment did not influence their translations.
Figure 4-7: Degree of translator satisfaction with final translated product LET/CTL

![Bar chart showing degree of satisfaction with final translated product LET/CTL.](chart.png)

Note: CTL = cryptologic linguist; LET = law enforcement interpreter/translator.

Figure 4-7 shows that both LET and CTL are generally satisfied with the way their translations were finalised, although an element of CTL said there were a few occasions where there was slight disappointment with the final translation product.

Figure 4-8: Translation objectiveness LET/CTL

![Bar chart showing translation objectiveness LET/CTL.](chart.png)

Note: CTL = cryptologic linguist; LET = law enforcement interpreter/translator.

As shown in Figure 4-8 all LET agreed that at least sometimes, and most of the time, their translations appearing in the form of transcripts were objectively translated and finalised in the way they would have normally produced a translation.
This was comparable with responses received from CTL who indicated that transcripts are objectively translated most of the time.

**Figure 4-9: Degree of translator integration into a team environment LET/CTL**

![Graph showing integration levels for LET and CTL](image)

Note: CTL = cryptologic linguist; LET = law enforcement interpreter/translator.

Figure 4-9 shows that most LET indicated feeling isolated and did not feel at all involved in the investigation process. All CTL felt they were mostly integrated as members of an operations team with most indicating they felt fully integrated.

**Questionnaire results: Barrister/Court interpreter**

**Figure 4-10: Translation objectiveness Barrister/Court interpreter**

![Graph showing translation objectiveness for CI and BAR](image)

Note: BAR = barrister; CI = court interpreter.
As Figure 4-10 shows, court interpreters generally agreed that at least sometimes, but not always, do transcripts translated from LOTE provide the court with an objective account of what was contained in the source text (for example, audio recording in LOTE). Court interpreters are well placed to comment in this regard because they often hear the audio recording in LOTE played in court followed by a reading of the English transcript. Barristers indicated that translated transcripts sometimes provide the court with an objective account of what was contained in the audio recordings, while another indicated that the transcripts are objectively translated most of the time.

**Interview results: Law enforcement translators**

LET were asked if they thought transcripts represent an objective and accurate account of what is conveyed in the source text. It was stated that ‘generally speaking they are objective’ and that ‘LET do their best considering they are not trained or skilled in this area’. It was generally agreed that the working environment is not an important factor in relation to influencing the way transcripts are presented and that transcripts were ‘objectively’ translated most of the time. The meeting of deadlines, lack of preparation for the task and lack of language for specific purposes training were factors identified as being aspects of the working environment that restrict LET ability to provide ‘objective’ translations that clearly and ‘accurately’ convey intended meaning. It was stated that it is extremely important for LET to remain independent and not to be influenced by the workplace and it was emphasised by LET that the courts and police do not interfere.

Asked if LET had ever been instructed to change their translation against their best judgement, all respondents replied that they had not; however, one LET stated they had to delete their translator’s notes based on the rationale that they should not provide information to assist the Defence case. All participants said they had never been influenced to skew their translations in order for the transcript to meet workplace expectations and/or requirements.

LET were asked if they felt they were/are engaged as an integral member of an investigation team. One said ‘no, and I don’t want to be’. All said they did not feel part of an investigation team, with one citing organisational structure as a factor contributing to their response; that is, LET were physically separated from other
areas such as investigation and intelligence. None of the participants felt they were part of a team, rather they worked in isolation for purposes of remaining impartial.

**Interview results: Court interpreter**

As court interpreters frequently work with translated transcripts in court, they were also asked to comment on indications that translated transcripts had been influenced by the LET working environment.

A Vietnamese court interpreter said possible causal factors relating to errors in translated transcripts seem to include external influences on the translation of transcripts, LET professional ability and the work culture. An example was given where an audio recording contained the words ‘Anh Anh Anh’ (‘Anh’ can have several meanings including ‘you’, ‘he’, ‘me’, ‘I”), but the transcript read ‘Anh Quang’ (a Vietnamese name). This error, according to one participant, had occurred ‘because the police wanted it in there’.

Another Vietnamese court interpreter gave a further example where an accused person was acquitted of charges after the court interpreter had reviewed the audio recording by comparing it with the translated transcript. The participant said it was a drug-related trial where the transcript contained the word ‘iceman’ because the LET who had translated the transcript had mistaken the Vietnamese words ‘người đó’ (meaning ‘that person’) for ‘người đá’ which was incorrectly translated as ‘iceman’.

It was further stated that while law enforcement agencies have the best listening devices and audio recording equipment, the attitude of the person transcribing the recording is very important. It was added that when preparing transcripts one has to go beyond the ability of just hearing because of the frequently poor audio quality of the intercepted communication. It was noted that listening device interception presents more challenges than telephone interception. It was further added that sometimes LET may make up the meaning to compensate for deficiencies in hearing or comprehending what was actually said.

**Interview results: Cryptologic linguist**

It was generally stated by CTL that translations are produced ‘objectively’; however, it was noted that the only working environment influence might be in relation to the format in which the information is to be reported. As far as accuracy is concerned, it was stated that the term is difficult to define. When asked what aspects of the working environment, if any, restricts participants in their ability to provide
‘purely objective’ translations that ‘clearly and accurately convey intended meaning’, it was stated that ‘isolation of the job’ was a contributing factor along with occasional limited access to support data due to some aspects of the operational environment.

CTL said they were able to produce objective translations with minimal influence from the working environment and they had never been asked to skew their translations to meet workplace-related objectives. They felt they were valued members of a team environment.

**Interview results: Cryptologic supervisor**

CTS were asked to what degree they thought transcripts might reflect the context in which CTL work. They said it very much depended upon the individual linguist. If in doubt they tend to lean toward a literal translation. They also said experience and knowledge varies across linguists and it depends on training and application of knowledge and skills. CTS stated that CTL are operationally focused and remain objective. They also said the operational environment may impact on the linguist and may therefore be reflected in the transcript, noting that CTL are sometimes subject to fatigue, discomfort, conflicting demands and issues affecting personal security.

Further, CTS were asked about when CTL have monitored a target of interest for some time, whether their ability to produce objective translations was affected by having had in-depth knowledge of the target. One CTS said this would not normally happen; another said it would be natural for the translations to have been affected, to some degree, in those circumstances. It was also claimed that CTL have been known to take shortcuts and to pre-empt what is going to happen.

CTS reported that CTL are neither instructed to change their translations against their best judgement, nor had they influenced CTL to skew the translation in order for the transcript to meet workplace expectations and/or requirements. One participant noted that it was probably because CTL are quite often the only subject matter expert available and nobody else is in a position to comment critically on what they produce. All CTS stated that CTL they had supervised were included as part of an operational team. The CTS interviewed agreed that CTL formed an important part of the team environment, especially during operational deployments to Afghanistan and the Persian Gulf as well as during the Cold War.
Summary: Working environment

The primary objective of this section was to determine to what extent, if any, the working environment influences the translation process for both LET and CTL so a comparison could be made between the two groups. This summary contains the main points extracted from questionnaires and interviews.

LET and CTL felt they were trusted as much as anyone else in the workplace, and their translations were not influenced by the working environment. However, CTL said they were required to follow some preformatted reporting requirements. LET and CTL were generally satisfied with how their translations were produced as a final product. LET said context does not influence their translations. In contrast to LET responses, court interpreters cited examples of serious errors in translated transcripts where they felt LET had been influenced by the working environment.

CTS and CTL said context does influence their translations and improves the useability of the translated product. CTL said gaps in supporting information can adversely affect the accuracy of translating intended meaning, but noted that accuracy is difficult to define. CTS commented that CTL lean toward literal translations when context or meaning is in doubt, and they do not influence the way CTL negotiate the translation process.

Most LET felt isolated and not part of the investigation team; however, all CTL felt they were fully integrated into the operations team. LET said translator’s notes are discouraged in translated transcripts to optimise the Prosecution’s case.

Court interpreters emphasised the importance of technology and the difference it makes to the audio quality of recordings from telephone interception and listening devices. Poor audibility will inevitably affect the quality of the translated transcripts.

4.3.5 Translation style and accuracy

This section contains results accounting for the most comprehensive of data collected in Tier 2. Judicial officers, barristers and court interpreters were well placed to comment on the style and accuracy of translated transcripts and the impact that disputed alleged accuracy of translations has on the judicial process. LET provided information through questionnaires and interviews relating to what guidance, if any, is provided in relation to the style and accuracy required of translated transcripts. Military CTL and CTS were also interviewed and the results
reveal how required style and accuracy is realised in a military context. The data are presented thematically so this section is sub-divided into several topic areas related to translation style and accuracy. Information collected from questionnaires is shown in Figures 4-1 to 4-20 followed by a narrative containing relevant comments participants provided during interviews. Only LET, CTL, barristers and court interpreters completed questionnaires. Judicial officers and CTS participated in semi-structured interviews.

**General comments**

This section begins with general comments participants provided followed by more specific topic areas relating to translation style and accuracy.

**General comments: Judicial officer**

Judicial officers commented on the importance of style and accuracy of translated transcripts and were asked to identify particular aspects of language used in the translated transcripts that potentially disrupt the flow of communication in court. The responses were of a general nature. One participant made the point that the transcript is only one part of the puzzle, noting that it is understandable that aspects of the translated transcript do not make sense in isolation from the broader context. It was stated that the broader context is supported by evidence from other sources such as witness statements, video surveillance and other forms of physical evidence. Judicial officers said the starting point for any trial will be that the transcripts are ‘accurate’, and that from there the Defence will try to create uncertainty about the meaning alleged by the Prosecution.

**General comments: Barrister**

Barristers said the style and accuracy of translated transcripts is extremely important to effective flow of communication in court, and it is widely acknowledged that nobody really knows if the translated transcripts are accurate, noting that in most trials the audio recordings are not played to the court. In addition, it was stated that only those parts of the translated transcripts important to a fact in issue would be looked at more closely if deemed necessary and only if challenged. Participants said this is because most drug-related cases are at least partly based on evidence presented in the form of telephone interception and/or listening device recordings. A barrister said that prosecutors must be confident they can prove beyond reasonable doubt that what is contained in the transcripts is ‘accurate’. If this is not
ascertainable there is no case to prosecute. It was emphasised that the accuracy of translated transcripts is fundamentally important to the interests of accused people from non-English speaking backgrounds. One participant said, ‘I prosecute with the evidence I’m provided with. My starting point is that transcripts are accurate’. One barrister said he is not aware of any legal ruling that defines what accuracy means in the context of translated transcripts.

**General comments: Law enforcement translator**

Relating to translation style and accuracy, LET were asked if any problems arise when lexical accuracy, or accuracy at word level, is compromised for the conveyance of overall sense. They said it depends on the competency of the individual LET, and that a good practitioner should not have a problem. One LET said a literal approach to the translation is not applied but rather a pragmatic approach is used, adding that for his translations, the translated transcript in English will make sense unless the participants in the source text conversation do not make sense themselves. Another LET said negotiating the conveyance of meaning varies within the translation. Sometimes the translation leans toward the source text taking a more literal approach, and at other times moving toward the target text to convey sense. They said problems are encountered when it is not known what the participants in the conversation are referring to.

Asked how any conflict between lexical accuracy and the conveyance of sense is managed when preparing transcripts for evidentiary purposes, it was stated that LET translate in a manner that the English reader would expect. LET said a pragmatic approach is applied but a balance needs to be maintained so as not to lose any evidentiary value or to avoid ‘contaminating the evidence’. Experience and accuracy were important factors identified by LET and it was generally agreed that accuracy is of primary importance.

**General comments: Cryptologic linguist**

CTL said they receive guidance relating to the style and accuracy required of transcripts and operational reports through supervisors and supporting documentation, noting that most tasks need to be reported in a specific style for operational purposes. Similar to comments made by LET, the approach CTL take in relation to translation style was reported by one participant as fluctuating between remaining close to the source text taking a more literal approach, and conveying
meaning in the target text for the purposes of operational useability. CTL reported that they vary in their approaches to translation along the spectrum between literal to more pragmatic approaches depending upon the nature of the task, primarily relying on their own professional judgement when translating.

CTL reported challenges encountered while producing transcripts from LOTE to include the difficulty of translating jargon and/or code words, the often poor audio quality of the intercepted communication, the type of language used by the target such as particular dialects, inadequate background information and/or inadequate specialised language training. One CTL said there is no room for compromise in an operational situation, and that where ambiguity exists, it usually involves use of jargon and/or code words/phrases or because the translation is inaccurate. In such cases where ambiguity cannot be resolved, the utterance is transcribed as it is heard (a literal translation) and the uncertainty is highlighted for further analysis. It was also reported that there have been incidents where some CTL who see themselves as being uniquely specialised in a particular language may not want to admit they do not know the meaning of an utterance due to ‘inflated egos and pride’, and therefore mistakes or omissions may go undetected.

**General comments: Cryptologic supervisor**

CTS were asked to comment on the guidance provided to CTL in relation to the style and accuracy required of transcripts. One participant said literal translations are required with translator’s notes as they mainly deal with formatted and structured source texts. It was also stated that instructions, policies and guidelines are in place for this purpose.

In relation to how frequently CTL were asked to change the style they have used when producing transcripts, CTS participants said the style required depends on the type of operational activity. CTL are frequently required to swap between producing full and detailed transcripts and producing a gist of what is being said for time-sensitive decision-making.

CTS were asked how CTL manage the conflict between conveying accuracy at micro levels of text and conveying sense when producing transcripts. Participants said this type of conflict is resolved through mentoring, quality control procedures and client feedback. One participant said the problem of fluctuation between literal and pragmatic translation has been evident in operational areas where linguists who
have not had ‘applied’ training have been engaged. Indecision by the linguist in relation to how to position the translated product, either literally or pragmatically, increases the element of doubt in the minds of decision makers. It was added that supervisors manage this situation by applying common sense, experience and intuition. One participant said that in his experience there has never been a requirement to address this issue.

CTS were asked what issues arise when lexical accuracy is compromised for the conveyance of overall sense, to which two respondents replied that it presents a high risk of conveying incorrect meaning with significant implications for the safety of military personnel and assets. Another commented that it is not usually a problem where the source text is in the form of pre-formatted military communications.

**Frequency of errors in translated transcripts**

Questions were asked of barristers and court interpreters about how errors in transcripts potentially affect the judicial process. This section shows results relating to the frequency of errors detected and how court interpreters negotiate the interpreting process when interpreting counsels’ questions containing extracts from translated transcripts.

**Questionnaire results: Frequency of errors in translated transcripts**

**Figure 4-11: Frequency of errors in translated transcripts, Court interpreter/Barrister**

![Frequency of errors in translated transcripts](image)

Note: BAR = barrister; CI = court interpreter.

The data in Figure 4-11 show that court interpreters indicated that at least sometimes translated transcripts contain significant errors or ambiguities. Barristers
indicated that between sometimes and most of the time ambiguities and errors are noted in translated transcripts.

**Undetected errors in transcripts**

Court interpreters and barristers responded to questions presented in questionnaires and interviews relating to the likelihood of errors contained in translated transcripts remaining undetected.

**Questionnaire results: Undetected errors**

**Figure 4-12: Likelihood of translation error remaining undetected**

![Image of bar chart showing the likelihood of translation errors remaining undetected by court interpreters (CI) and barristers (BAR).](image)

Note: BAR = barrister; CI = court interpreter.

Figure 4-12 reveals that court interpreters and barristers agree that at least sometimes distortions in meaning contained in transcripts went undetected in court proceedings with barristers indicating that it happens frequently to most of the time.

**Interview results: Frequency of undetected errors**

Court interpreters were asked how frequently they think errors in translated transcripts go undetected by those unfamiliar with the source language. A Mandarin/Cantonese interpreter said ‘very often’ and a Vietnamese interpreter stated ‘this happens frequently because there is no time to address these issues’.

When asked what action court interpreters take if they detect ambiguities or errors in transcripts, it was revealed that unless it is an issue that affects the interpreting process they ‘let it go’. A Vietnamese interpreter said they are not obliged to report detected errors in accordance with the code of ethics, while another
said they would report the error if they felt it was the right thing to do. A Mandarin/Cantonese interpreter said, ‘as an interpreter, we have no idea of what is of interest in relation to the fact in issue’. A Vietnamese interpreter said, ‘it’s too hard to address’ and ‘it’s a procedural issue where there’s reliance upon the witness to challenge’.

When asked how often a witness challenges the alleged accuracy of a transcript after having listened to the corresponding audio recording in court, court interpreters varied in their responses. One said it does not happen very often but it does happen, whereas another interpreter said it happens frequently. A further comment was that it often comes down to the level of education of the accused, and that family members often follow the transcript and initiate challenges to alleged accuracy through the Defence barrister. It was added that the accused would often just listen to their own voice in the recording and not pay attention to the translated transcript because they often do not speak or understand English.

Barristers claim it is likely that errors would go through undetected if the alleged accuracy of a translated transcript were not in dispute. Participants emphasised that only those parts of translated transcripts that are in contention about a fact in issue may be disputed; the rest is ignored. It was stated that it would be too resource intensive to have entire translated transcripts checked for veracity. It was added that if transcripts contain inaccurate translations of code words it is up to the Defence to challenge the alleged accuracy. They do this by consulting their clients. Barristers’ ability to have the transcripts checked should their clients not speak English is limited by funding made available through Legal Aid.

**Interpreting extracts from translated transcripts**

It was noted from Tier 1 trial observations that court interpreters often have difficulty interpreting counsels’ questions that contain quotes from translated transcripts. This section shows results of the level of difficulty associated with this task, as assessed by barristers and court interpreters.

**Questionnaire results: Interpreting extracts from translated transcripts**

All barristers indicated that the task of examining and cross-examining witnesses through an interpreter was difficult when putting questions to a witness based on, and quoting extracts from, translated transcripts.
Figure 4-13: Difficulty interpreting extracts from translated transcripts, Court interpreter/Barrister

As shown in Figure 4-13, barristers indicated that only some experienced court interpreters can facilitate effective questioning in this area. In relation to what effect legal questioning by counsel has on the transfer of meaning when they quote the content of translated transcripts, court interpreters said it creates a lot of confusion causing an increase in the level of distortion of meaning. None of the court interpreters indicated that it was easy to interpret questions put to witnesses by counsel based on, and quoting extracts from, translated transcripts. Court interpreters said not all NAATI professionally accredited interpreters can do it. Court interpreter responses relating to the task of interpreting extracts from translated transcripts contained in counsels’ questions ranged from challenging to extremely difficult.

**Interview results: Interpreting extracts from translated transcripts**

Based on their observations and experience when working with court interpreters, barristers were asked how difficult it is to examine and cross-examine witnesses through an interpreter when quoting extracts from translated transcripts. They said it was a difficult task where ‘only some experienced court interpreters can facilitate effective questioning in this area’.

Court interpreters were asked to comment on particular aspects of translated transcripts that seem to be problematic. They said sometimes the English in the translated transcript is not ‘proper’ English so applying context is difficult when
interpreting. They also said English expression contained in translated transcripts was too literal in nature; that they contain unusual terminology.

**Judicial fairness**

Barristers and court interpreters commented on the potential for errors to be contained in translated transcripts, and to what degree the quality of translated transcripts might be prejudicial to the accused receiving a fair trial.

**Questionnaire results: Judicial fairness**

**Figure 4-14: Effect of transcript errors on judicial fairness, Court interpreter/Barrister**

![Graph showing the effect of transcript errors on judicial fairness](image)

Note: BAR = barrister; CI = court interpreter.

Figure 4-14 shows that all court interpreters and barristers indicated that, to at least some degree, the quality of translated transcripts have the potential to jeopardise the element of fairness in the judicial process.

**Translated transcript error causal factors**

Comment was sought from all participants in relation to what factors contribute to errors contained in translated transcripts. Court interpreters and barristers responded to a questionnaire on this topic. Judicial officers, barristers, court interpreters, LET, CTL and CTS contributed information during interviews about translated transcript error causal factors.
**Questionnaire results: Translated transcript error causal factors**

**Figure 4-15: Translated transcript error causal factors, Court interpreter/Barrister**

As shown in Figure 4-15, most court interpreters attributed discrepancies noted in translated transcripts to deficiencies in training, incompatible accreditation standards, workplace influence and/or insufficient access to intelligence/background information provided to translators of transcripts.

In seeking their opinion of the reasons discrepancies occur in transcripts, barristers indicated that inadequate training, accreditation standards, workplace influence and lack of access to intelligence/background information all contributed. Another respondent was unsure.

**Interview results: Translated transcript error causal factors**

Judicial officers were asked to offer an opinion about what causal factors they think contribute to problem areas associated with translated transcripts. One judge said it appears there is a variance in the competence and opinions offered by court interpreters. Another judicial officer said the translated transcripts do not reveal the full picture, as they do not contain inflexion of speech, and further commenting that the translated transcripts in isolation are of limited value. A judicial officer said there might be intrinsic problems when the accused speak in code and intend to remain covert. It was claimed to be very rare to see cases where there are few inaudible remarks contained in translate transcripts.
When questioned about the factors participants attribute as the primary cause of problem areas in translated transcripts, a prosecution barrister did not see any problem. A defence barrister said the law enforcement environment and associated influences to which LET are subjected when producing transcripts all have an impact on the objectivity of the translated transcript. It was further stated that the only way this can be overcome is through proper quality control of translated transcripts.

Tense was an area identified as often presenting problems for LET that may contribute to errors detected in translated transcripts. A Vietnamese LET said the conveyance of tense into target text is context-dependent and is often a very difficult task. Mandarin/Cantonese LET also said this causes difficulties stating that tense is not often made explicit in Chinese but it is important that it is conveyed into English so the target text makes sense. This was also stated as a problem for Indonesian translators where determining tense was largely dependent upon context of the source text. An Indonesian LET provided an example by saying that less educated Indonesians use the word ‘yesterday’ to indicate something that happened in the past.

The researcher investigated strategies LET use to overcome problems of tense. An Indonesian LET said interpreters use their discretion based on context of the source text and a Vietnamese LET said that without knowing the context of the source text time could not be determined. Vietnamese LET added that background information can be of assistance and that experience as a translator is important to resolving issues of tense.

In a military context, CTS were asked to identify what particular linguistic aspects of transcripts, if any, they had found to be problematic and how these problems were resolved. It was stated that there are occasional attribution issues relating to who was saying what, but this is not a significant problem. CTS stated that due to reasons of timeliness, read-back of recordings is sometimes impossible, and that mistakes are sometimes made due to misinterpretation of information.

**Translated transcript quality control**

This section shows data collected relating to dispute resolution and the quality control of translated transcripts. Questions were asked of barristers and court interpreters during interviews about how disputes concerning the alleged accuracy of translated transcripts are resolved in court, and what impact these disputes have on judicial processes. To compare practices in the law enforcement environment with
that of the military, CTL and CTS were also interviewed and provided information of how translated transcripts are quality controlled in a military context.

**Interview results: Court environment**

When it came to reconciling the disputed accuracy of translated transcripts or parts thereof, barristers said court interpreters are often asked to provide advice to the court to clarify proper meaning. Disputes concerning alleged accuracy may also be resolved by cross-examining the witness; however, it was noted that cross-examining a witness on information contained in a translated transcript with the assistance of a court interpreter is very difficult. Barristers said it was a matter for the jury to decide. Another said sometimes the Prosecution makes an issue of alleged meanings of words like ‘thingy’, which sometimes complicates the trial unnecessarily.

Barristers added that translated transcripts are usually in dispute in trials, and no translation quality control processes are in place. These disputes were reported as being mostly resolved through the judicial process. One participant provided an example by recounting a situation where three Vietnamese interpreters were called upon to resolve the meaning of one word in a translated document. All barristers said no quality control processes are in place for checking the alleged accuracy of translated transcripts, and that the accused and/or the accused’s friends or family are primarily relied upon to provide advice concerning the veracity of translated transcripts. It was further stated that, in the event that nobody speaks English, an independent interpreter may be engaged to check the transcript; however, that would depend on the availability of funds and it does not happen often.

A Vietnamese court interpreter said both Defence and Prosecution barristers frequently call upon court interpreters to comment on and clarify issues of alleged accuracy in translated transcripts. A court interpreter said, ‘there are ethical issues associated with this as we find it extremely difficult to assist both the Prosecution and the Defence on the same issue’. It was stated that this frequently raises issues of conflict of interest where they have to also interpret for the witness, adding that they are unfairly multi-tasked. A Mandarin/Cantonese interpreter said, ‘it’s not our job but we are still asked to do it. It could be seen as a conflict of interest and it puts us in a difficult situation’. Another interpreter said, ‘it’s difficult and it distracts us. Also, we don’t want to stab our fellow interpreters in the back’. It was further stated that court
interpreters do not have access in court to the necessary equipment to assess the alleged accuracy of translated transcripts against audio recordings.

Asked how often they are asked to comment on the content of transcripts, court interpreters said they are frequently asked to listen to audio recording and comment on the corresponding translated transcript to determine alleged accuracy of the translation. They are then asked to interpret extracts from the translated transcripts, which are put to the witness during questioning, but having to do so without any contextual background in relation to the extract of the translated transcript. The court interpreter said, ‘we are often confronted with a situation where the witness themself is confused’. The respondent further stated that it happens often when the witness has listened to the audio recording played in court, then when counsel poses a question quoting the corresponding English transcript, which is interpreted by the court interpreter, the witness denies having said what is put by the barrister because it wasn’t said in the first place. It was also stated that often what is heard in the audio recording and what is contained in the transcript is mismatched, adding that some Vietnamese words are misheard which creates further problems because the translated transcripts will be inaccurate, which causes the barrister’s questions to appear as nonsense to the witness.

In relation to how translated transcripts in dispute are reconciled, one interpreter said discrepancies are quality controlled by court interpreters while another said disputes about translated transcripts are sometimes impossible to resolve and are sometimes glossed over because no resources are allocated to investigate or to quality control them. The interpreter added, ‘nobody wants to pay for this to be done properly. Rather, the court will use and abuse the interpreters in the courtroom at the time as they see fit. It’s very unfair’. A Vietnamese court interpreter added that, in relation to confusion, ‘thingy’ causes frustration for everyone because it does not make sense to anyone other than to the police and the person who produced the transcript. Another Vietnamese interpreter said the court resolves the disputes through ‘agreement, acceptance, admission or by simply forgetting about it’.

A court interpreter said barristers would rather not use interpreters because when they do, they find it more difficult to play with words. The interpreter further stated that counsel should not use jargon. The interpreter revealed that a fellow court
interview had interpreted extracts from a translated transcript in court that the same
court interpreter had produced under contract for a law enforcement agency.

**Interview results: Military context**

In relation to questions asked of how translated transcripts are quality
controlled in a military environment, CTL said it was largely up to the linguist to do
self-appraisal. This was mainly due to there being limited resources, if any, available
in an operational environment to have the translations checked by someone else.

CTS were asked to identify problems they have experienced with the way
information has been translated. It was stated that problems occur when linguists
sometimes translate far too literally or too freely where they insert their own words.
There appears to be no optimal approximation of meaning. Another participant noted
that sometimes translations are not purely objective when linguists are locally
engaged and environmentally influenced, as was often the case in Afghanistan. Some
examples were provided where linguists had missed vital information, which was not
discovered through quality control measures but picked up by accident. It was stated
that the main difference between LET and CTL is that CTL mostly work in a large
team environment and have a lot of peer group pressure/support. CTS commented
that, depending upon the nature of operations, translated transcripts were scrutinised
by more experienced CTL or were quality controlled by supervisors and linguists
verifying the translated product with data from other sources.

**Delays in trials due to disputes over accuracy**

Judicial officers, barristers and court interpreters provided comment on delays
in trials that can be attributed to the disputed accuracy of translated transcripts.
Questionnaire results: transcript-related delays in trials

Figure 4-16: Trial delays due to disputes over alleged accuracy of translated transcripts, Court interpreter/Barrister

Note: BAR = barrister; CI = court interpreter.

Barristers were asked, based on their experience, how often they thought alleged errors in translated transcripts disrupted and caused significant delays in court proceedings. Barrister responses, shown in Figure 4-16, were either never or always. Court interpreters said that at least sometimes alleged inaccuracies contained in translated transcripts disrupt and cause significant delays in court proceedings, with indication that it happens frequently.

Interview results: translated transcript related delays in trials

In relation to how frequently, if at all, trials are delayed due to issues concerning the alleged accuracy of translated transcripts, one judge stated ‘infrequently’ and another said issues of accuracy are usually sorted out before the trial begins, although it was recognised that quality control of the translated transcripts is resource and time intensive and limited by the funding available. Another judicial officer said big trials usually experience delays of varying length, depending on how the judge gives directions. The judge may give a direction that by ‘x’ date disputes are to be sorted out.

Barristers reported that delays in trials due to questionable accuracy of translated transcripts are infrequent, with one barrister saying it has only occurred twice in 30 years of his experience. Another barrister added that it does not happen...
often because it is a money issue, and when it comes to scrutinising the alleged accuracy of translated transcripts, it comes down to how much Legal Aid is willing to contribute. It was also stated that friends and/or relatives of the accused are more than likely to challenge the performance and accuracy of the court interpreter rather than to focus on the translated transcript. A participant noted that, in his experience, almost every trial experiences disputes over translated transcripts.

Court interpreters were asked to comment on how often trials are delayed due to disputes concerning the meaning conveyed in translated transcripts. A Mandarin/Cantonese interpreter said it does happen on occasion, and provided an example where the respondent was asked to help clarify issues concerning five sentences in a translated transcript. In this case two interpreters from Victoria were involved in trying to resolve the issue and another three interpreters were flown from Sydney to Melbourne to help. All five interpreters came up with five different interpretations of the source text sentences, but were instructed that they had to agree on only one correct translation. It was stated that it became too hard and the issue was ‘dropped’ from the trial. Other interpreters stated that trials are sometimes delayed due to disputes in meaning conveyed in translated transcripts, with one interpreter saying these discrepancies make court interpreting a difficult task, and that it leaves the interpreter feeling ‘mentally bashed’. Another Vietnamese interpreter said it is not usually a problem and that they ‘just work around it’.

**Summary: Translation style and accuracy**

Participants commenting on the style and accuracy of translated transcripts confirmed that the Prosecution and the Defence agree transcripts are accurate before trials begin. However, a barrister commented that ‘nobody really knows whether the transcripts are accurate or not’, as they are not subject to a rigorous quality control process. Having accepted that the translated transcripts are accurate in as far as what is written, the alleged meaning of the utterances is often disputed during the trial. Therefore, it is clear that the term ‘accuracy’ is applied to different levels of text contained in translated transcripts. While a translated transcript may be accepted as accurate at a semantic level, the communicative function of the words in the translated transcript is often in dispute, leaving the jury to determine the veracity of the alleged communicative function of what is in the translated transcript. It was also revealed that only those disputed segments of the translated transcript deemed
relevant to a fact in issue are scrutinised. Errors in the translated transcripts that are not in dispute are likely to go undetected and not brought to the attention of the court.

LET and CTL reported moving between literal and pragmatic approaches when producing translated transcripts, relying upon their best judgement. Both LET and CTL agreed that translating code words and jargon is challenging, although CTL are provided with a list of code words and their meanings in contrast to LET who said they are not. All participants used the word ‘accuracy’ as if it was a commonly understood norm, but only one participant (a CTL) commented that ‘accuracy is hard to define’. It appeared that while key stakeholders of translated transcripts use the term ‘accuracy’ frequently, it remained an ambiguous concept in the absence of an agreed definition. CTS said useability of the translated product is of primary importance, and therefore the translation has to make sense. However, CTS also said they prefer more literally orientated translations to avoid potential for ambiguity. This appears to be similar to expectations of the courts, which is indicative of a wider misconception held by clients of translations that translators of LOTE perform the function of a conduit where literal approaches are confused with perceptions of accuracy (Laster & Taylor 1994). Therefore, maintaining notions of accuracy while conveying sense is a common dilemma both LET and CTL face when producing translations from LOTE. The difference is that CTL are fully supported with background information and intelligence support where LET reported they are not.

It is evident from the sampled utterances of translated transcripts contained in Tier 1 that LET apply a literal approach to the translation process. Barristers and court interpreters reported that this approach causes difficulties when the court interpreter is required to interpret extracts of the translated transcripts from English back into Vietnamese for non-English speaking witnesses. It is inevitable that a significant loss of translation veracity will result when a court interpreter is required to back-translate these extracts contained within counsels’ questions from English into LOTE during the questioning of a non-English speaking witness. Barristers and court interpreters said only highly experienced and competent court interpreters are able to perform this function effectively. This led to comments by barristers and court interpreters to the effect that the quality of translated transcripts adversely affects the element of judicial fairness.
According to barristers and court interpreters, causal factors relating to errors detected in translated transcripts can be attributed to no specialised training, a lack of intelligence support, incompatible NAATI accreditation standards and workplace influences. All these factors culminate in disputes over the alleged accuracy of translated transcripts resulting in significant delays in judicial proceedings. Barristers and court interpreters stated that because errors frequently go undetected in the absence of adequate quality control measures, the element of judicial fairness is significantly compromised. Court interpreters said they are obliged to remain impartial, and it should not be up to them to determine the accuracy or otherwise of the translated transcript.

4.3.6 Unique terminology and code words

Data collected from court observations revealed use of terminology that appeared unique to translated transcripts. Of particular note was frequent and seemingly indiscriminate use of ‘thingy’ and arguably the sub-optimal lexical choice of ‘gear’ in translations alleged to refer to drugs. In addition, terms of address were used during the trials in a manner that appeared peculiar to translated transcripts. For this reason, participants were asked to identify unique terminology they had detected in translated transcripts, including alleged code words and jargon. Judicial officers, barristers, court interpreters, LET, CTL and CTS participated in responding to questions relating to unique terminology used in translated transcripts.
Questionnaire results: Unique genre of language

Figure 4-17: Frequency of natural sounding English in translated transcripts, Court interpreter/Barrister

Note: BAR = barrister; CI = court interpreter.

Figure 4-17 shows that barristers and court interpreters agree that only sometimes do transcripts contain natural English expression, with an indication that they never do.

Figure 4-18: Unique genre of language used in translated transcripts, Court interpreter/Barrister

Note: BAR = barrister; CI = court interpreter.
Figure 4-18 shows that court interpreters and barristers agreed it was at least probable that language used in translated transcripts represents a type of language unique to the law enforcement environment that is not likely to appear elsewhere.

**Figure 4-19: Appearance of unique terms/phrases in translated transcripts, Court interpreter/Barrister**

The range of responses in Figure 4-19 reflects disagreement between court interpreters and barristers about how frequently translated transcripts contain unique terminology. This diverse range of responses may reflect an acceptance of workplace specific terminology as a norm and not seen as unique or odd.

**Interview results: Unique genre of language**

In relation to terms used in transcripts that may have caused confusion for the jury or members of the courtroom, judicial officers said the word ‘thingy’ and other words, such as ‘gear’, were problematic. It was stated that in one particular trial the term used for ‘one of’ was in dispute. In relation to ‘thingy’, a judicial officer said it is generally accepted that the word means drugs contextually and that this is not usually disputed. It was pointed out that, at the commencement of the trial, the jury receives a glossary of alleged code words and terms used in the transcripts. This glossary is contained in the jury book.

Comment was sought from barristers about terms that appear in transcripts that may be considered unique to the legal environment. A prosecution barrister said that unless the terms used have something to do with proving a fact in issue he did not
have much interest in terms that are a bit unusual. A defence barrister noted the terms ‘lass’ and ‘lad’ appearing in transcripts appeared to be unique but accepted there are Vietnamese equivalent terms for those words and that is why they appear as such in the transcripts. Another barrister said terms such as ‘lass’ and ‘bro’ are a bit unusual and sound ‘jarring’ when translated into English. It was stated that ‘thingy’ is a clear example of a reference word that is translated as a ‘clumsy noun’. It was stated that there is a problem where barristers are unable to determine what is ‘accurate’ and what is not as no quality control process is in place, and that terms unique to the legal process may have an adverse effect on the reliability of evidence presented in court. It was also stated that these terms may be used to find appropriate equivalent terms in English and while it would be ideal for the transcript to be clear, there will always be ambiguity.

The word ‘thingy’ was reported as a term that caused difficulty for defence barristers but they said it depends on the trial. It was also stated that these unique terms have the potential to adversely affect the judicial process, but it depends on what is considered important to the issues to be decided by the jury. A barrister emphasised that the starting point for any trial was that the transcript is accurate both lexically and in terms of meaning; however, what they need is a translation and not an interpretation of what was said.

Court interpreters were asked to comment on any terms used in transcripts that they felt are not normally used in everyday speech or appear to be only used in a court environment (for example, personal pronouns, reference words, kinship terms of address). A Vietnamese court interpreter said words such as ‘brother’, ‘sister’, ‘lad’, ‘lass’ and ‘thingy’ commonly appear in translated transcripts from Vietnamese conversations. These terms were put to a Mandarin/Cantonese court interpreter who said the terms ‘lad’ and ‘lass’ had not been encountered in translated transcripts from Chinese. However, this same interpreter said terms like ‘aunty’ or ‘brother’ do appear. A Vietnamese court interpreter said the reason these terms are used in translated transcripts is because it is due to a work culture phenomenon. It was further added that these terms cause significant confusion in court when having to be interpreted for a witness, and they distort the meaning of evidence presented in court. It was stated that this is because it is often difficult or impossible to interpret an equivalent meaning to and from Vietnamese. Another Vietnamese interpreter said
that while these terms are unique, they serve a purpose in that they convey the ‘equivalent meaning’. The same interpreter said appearance of ‘thingy’ in transcripts is ‘normal’ and these terms generally do not cause difficulties for interpreters.

LET were asked to identify what terms, if any, used in transcripts are unique to the law enforcement environment. A Vietnamese interpreter identified ‘lass’ and ‘lad’ as examples of unique terms, adding that everyone has a specific style used to reflect that it is a drug or criminal situation. The same respondent said, ‘I try using objective everyday language unless you understand the code word or slang, otherwise general language is used’. A Mandarin/Cantonese interpreter said ‘thingy’ was a unique term that appeared in translated transcripts.

LET who had identified the aforementioned unique terms were asked how they thought these terms may affect the way in which evidence is presented and understood in court. In response, they said it could distort the evidentiary process and affect the interpreter’s credibility.

To contrast the legal context with the military sector, CTS were asked if transcripts produced by CTL were produced in ‘natural’, ‘everyday English’ or if they are translated in a particular style for national security purposes. Responses were that translations are usually in everyday English. However, many source texts conform to a pre-formatted structure that requires the same format to be rendered in the target text. It was further added that it largely depends upon the circumstances.

When asked in what way transcripts from LOTE might differ from transcripts produced for any purpose other than for national security purposes, CTS said translated transcripts of military and police communications need to be meticulous and complete, but it depends on the circumstances as context varies significantly across operational requirements.

**Kinship terms of address**

The words ‘lad’, ‘lass’, ‘aunty’, ‘sis’, ‘bro’ and other references to kinship terms of address appearing in translated transcripts observed in Tier 1 trials, appeared to represent a genre of language unique to translated transcripts used for evidentiary purposes. Some confusion was noted in the trials, where Vietnamese kinship terms of address had seemingly been distorted or misrepresented in translated transcripts. Judicial officers, barristers, court interpreters and LET were asked whether the way kinship terms of address had been translated in transcripts caused confusion in trials.
Interview results: Kinship terms of address

When asked about potential or actual confusion in the courtroom where reference to kinship terms of address appeared in transcripts, judicial officers noted that sometimes there is confusion; one participant said sometimes the LET gets the names confused or attributes names to utterances incorrectly.

In relation to the use of kinship terms used in translated transcripts, while it did not cause a problem for one barrister, the remaining interviewees said it is a problematic area and that it can be an issue where terms like ‘sister’, ‘brother’ and ‘aunty’ are used when they may not be immediate family members. It was also noted that the same terms used consistently in the source text appear to have been used differently and inconsistently throughout target text transcripts from one day to the next. Intermittent use of ‘thingy’ was noted as one such example. It was also stated that this problem is perpetuated because no impartial LOTE speaker is available to comment objectively on the alleged accuracy of translated transcripts. It is therefore not usually known if a problem exists in terms of accuracy, noting that where a LOTE is a factor in trials, it adds further complexity to an already complicated process. A defence barrister said the Prosecution always has the upper hand having produced the translated transcripts, where the Defence does not have adequate resources available to check the alleged accuracy of the transcripts.

Court interpreters said that while translation of kinship terms of address from Mandarin and/or Cantonese was not considered problematic, it was reported to be a frequent problem from Vietnamese. It was stated that Vietnamese kinship terms of address are often misrepresented in translated transcripts and that slang, jargon and alleged code words cause some difficulty. Vietnamese interpreters said the terms ‘uncle’, ‘aunty’, ‘brother’ and ‘sister’ are often applied generally and it is difficult to establish the true relationship between speakers as they appear in translated transcripts.

LET reported use of kinship terms and other terms of address in the source text presents some difficulties during translation. A Mandarin/Cantonese LET stated that, in some situations, everyone is referred to as ‘big brother’ or ‘buddy’ whether they are male or female. In these cases it was stated that footnotes are used to avoid ambiguity. Another Mandarin/Cantonese LET stated that while it does cause some ambiguity, it is often hoped that the barrister will ask questions to clarify the
situation in court. Ambiguity in this area was also reported as being a problem when translating from Indonesian, in which case an Indonesian LET said translator’s notes should be used. A Vietnamese interpreter said people tend to translate kinship terms as literally as possible which causes ambiguity in translated transcripts. One participant said words such as ‘lad’ and ‘lass’ have been used in New South Wales courts but he does not use those terms in his translations.

CTL were asked if they experienced problems translating reference words, kinship terms and other terms of address or conveying tense in translations. It was generally claimed that these aspects did not present a major problem for participants who all said context resolves many of these issues. Terms used in transcripts that appear unique to the military environment were stated by CTL to be cover and code words and jargon, which are mostly target specific.

**Pronunciation of names**

Mispronunciation of Vietnamese names was commonplace during the trials observed in Tier 1. Judicial officers, barristers and court interpreters were therefore asked to comment on the affect such mispronunciation has on the judicial process.

**Interview results: Pronunciation of names**

When asked whether the incorrect pronunciation of names, terms of address and other LOTE words referred to by non-LOTE speakers in the courtroom causes confusion during trials, the general response from judicial officers was that it has little effect on the judicial process. Barristers said that while incorrect pronunciation of names as read from translated transcripts may cause some confusion for the jury it does not have a great impact on the trial. One interviewee said it depends on the circumstances, but the correct pronunciation of names is not usually a problem so long as there is no issue of identity. One participant cited an example of a trial where ambiguity of identity in the transcript was resolved through the judicial process.

Court interpreters said ambiguity relating to identity is as a result of mispronunciation of names and other LOTE words during trials when read from translated transcripts. This has reportedly resulted in problems relating to gender attribution and it is usually the witness who identifies the problem when either being examined or cross-examined in relation to utterances contained in the translated transcript. They claimed it causes a lot of confusion for court interpreters but is usually resolved through the course of the judicial process.
**Reference words**

During interviews, barristers, court interpreters and LET were invited to comment on the translation of reference words appearing in translated transcripts. The rationale behind asking questions about reference words is that translation of some Asian languages into English can be challenging when conveying intended meaning where reference words, such as ‘it’, ‘that’, ‘this’ or ‘those’, are used or implied in source text.

Use of reference words in transcripts was not reported to be a major problem according to barristers interviewed; however, one interviewee did say reference words have caused confusion and sound quite jarring in translated transcripts where the English does not sound ‘natural’.

Translation of reference words was not identified as a problem for court interpreters of Mandarin and Cantonese, but was a problem for court interpreters of Vietnamese. An example was provided where ‘thingy’ appears in transcripts as a result of mistranslating reference words. One participant, an experienced Vietnamese court interpreter, advised that ‘thingy’ cannot be back-translated into Vietnamese, further adding that the word is used instead of more appropriate reference words, such as ‘it’ and ‘that’.

It was also claimed that perhaps ‘thingy’ could be used in a translation where a person is trying to recall the name of an object they are referring to but at that moment cannot think of the right word to use. An example provided was when someone might ask ‘where is the sugar?’ and the reply is, ‘Next to the thingy’, referring to the kettle, but not being able to immediately think of the word for it. The respondent also added that most of the time ‘thingy’, as it appears in transcripts, is used indiscriminately and should not be used the way it currently is by LET.

Another Vietnamese interpreter said that sometimes the producer of the translated transcript applies the ‘generalisation rule’. This rule involves repeated use of the same lexical equivalent in translation whenever a particular term appears in the source text. An example provided related to repeated use of the Vietnamese word ‘áy’ heard in source text, which is usually attributed to drugs. It was further added that it depends on context, and complications relating to reference words can often be attributed to ‘linguistic problems’.
LET were asked if reference words cause difficulty during translation. A Mandarin/Cantonese LET said the word ‘it’ sometimes cannot be translated into Chinese, stating that often ‘thingy’ is used in translations because there are no reference words in Chinese. The interpreter offered an example of where, literally, the translation would be ‘Can you bring to me’ it would probably be translated as ‘Can you bring the thing to me’.

Another Mandarin/Cantonese LET said that while there is a problem translating reference words from Chinese to English, ‘thingy’ is used. When asked where the LET had acquired this strategy, he said a Vietnamese colleague who also produces transcripts for evidentiary purposes had recommended the strategy of using ‘thingy’ for reference words. The interpreter provided an example of, ‘Have you got yet?’, which would be a literal translation from Chinese demonstrating omission of the reference word ‘it’.

A Vietnamese LET said, ‘it’s a headache’, adding that ‘it’s very hard and when there’s uncertainty in Vietnamese, it’s difficult to express the intended meaning in English’. He said it is often contextually dependent. This same LET stated that drug-related trials in the District Court in Sydney often encounter issues relating to Vietnamese reference words, such as the word ‘nó’, which can be used to refer to ‘him’, ‘her’ or ‘it’. The same LET also said some interpreters in Sydney use ‘thingy’, and first noticed its use in a translated transcript ‘14 or 15 years ago’. The LET said, ‘it’s a subjective word, and I never use it’ adding that ‘it’s the same as “bro” and “gear” which are not right either’. The respondent went on to say the consequences of choosing inappropriate terms during translation are potentially significant as they may impact on something important. He provided some examples of other code words, such as ‘đẹp’ (beautiful) and ‘sâu’ (ugly), used as descriptive words to denote the quality of drugs; recalling a trial where it was alleged the Vietnamese word ‘gái’ (girl) was used to mean one kilogram of drugs.

An Indonesian LET said reference words do not usually cause a problem.

Noting that translation of reference words has caused a problem in some languages, LET were asked about what guidance, if any, is provided to interpreters and translators about assigning meaning to reference words within the context of the intercepted conversation. One LET stated that if training in translating telephone interception and listening device product was provided, it would enhance the quality
of translated transcripts and that it needs to be done. All participants said no guidance was provided in this area.

In relation to assigning meaning to reference words within the context of intercepted communications, CTS were asked what instructions are given to CTL. It was stated that it depends on experience and application. All participants agreed that CTL are told to report what they hear and not to make it up; that is, the word ‘it’ is ‘it’ and not something else. It was also noted that many source texts are procedural or formatted communications.

**Code words and jargon**

LET generally acknowledged that code words and jargon used in illicit-drug activity were common and that a literal approach was taken when translating them into English. However, they also said the approaches they took fluctuated between literal and pragmatic translations and depended on the understanding the linguist has of context relating to the conversation being translated. The responses from LET about the advantages of being provided with a list of code words and their meanings varied. Some considered that access to such a list would be advantageous while others feared it might adversely affect their ability to produce objective translations.

Judicial officers said the alleged use of jargon and/or code words, as they appear in transcripts, sometimes causes confusion in the courtroom; one judge again cited the specific example of use of ‘thingy’. One judicial officer noted that these issues had only come to the surface during recent trials. Another judicial officer said there is not usually any confusion in the courtroom when there is agreement of register in relation to use of codes and their translated meanings, commenting that the expert witness provides a statement of what the code words mean. The Prosecution can argue contextual evidence, but it is up to the jury to decide how the words fit into context. The word ‘gear’ was noted by one judicial officer as a term that can mean many different things, and added that it was odd to see words commonly seen in English (monolingual) drug-related cases also appearing in translated transcripts. It was further stated that it gets complicated when alleged code words for drugs are common terms used for food items.

When asked whether the alleged use of jargon and/or code words appearing in translated transcripts potentially causes confusion in the court interpreting process, all but one barrister said it does. A defence barrister commented that it is an issue of
contention ‘90 per cent of the time’ when the accused is not the witness being questioned. The same barrister offered an example where the word ‘cake’ was alleged to have been a code word for drugs; however, during conduct of a voir dire where the LET was called to give evidence concerning the accuracy of a transcript, it was determined that the word ‘cake’ had been mistaken for the word ‘care’. This example was of interest to the researcher as the word for ‘cake’ and the word for ‘care’ in Vietnamese are distinctly different in terms of spelling and pronunciation. Some examples of alleged code words in contention included the words ‘one of’ or ‘a piece’ and ‘cake’. One barrister commented that it is difficult enough when code words are used in trials that do not involve LOTE.

In relation to whether code words and jargon are found to be incorrectly translated, it was stated by barristers that they often do not know what is correct. It was added that it is easy to be critical of translations from an outsider’s perspective, but noted the quality of translators varies wildly and for some of the rarer languages translators do not even hold professional accreditation.

Court interpreters reported alleged use of jargon and/or code words appearing in transcripts as having caused a lot of complication for the interpreting process in court. It particularly causes challenges for the court interpreter when excerpts of translated transcripts form part of counsel’s questions put to a witness through an interpreter. The main problem, as stated by one respondent, was that quite often no context is provided to the extract having been lifted from the transcript forming part of counsel’s questioning. The respondent added that, for this reason, there is a high level of doubt in terms of what is actually meant due to lack of context. Providing an example, the respondent again referred to use of ‘thingy’ as it appears in transcripts, commenting that while it may be alleged that it is a code word, it usually appears in Vietnamese drug-related transcripts of telephone and listening device recordings. The respondent went further by adding there is no equivalent for ‘thingy’ in Vietnamese. The respondent provided some examples—‘to give birth’, ‘a unit’ and ‘gear’—where alleged code words were incorrectly translated. A court interpreter noted the word ‘gear’ as being a particular problem, saying the corresponding Vietnamese word as used in the original utterance means ‘stuff’ not ‘gear’, adding that there is another more correct lexical term in Vietnamese that means ‘gear’, but it was not used by the people in the recorded conversation. The respondent added that
‘gear’ has been used by the LET in the translated transcript because it has a criminal connotation. Another example provide by a Vietnamese interpreter was the term ‘one of (something)’ which was translated in the transcript as ‘a piece’. This formed an important part of the evidence produced in a Vietnamese drug-related trial and represented another example of an inappropriate lexical term being used instead of an optimal equivalent. It was reported that the term ‘a piece’ as translated from Vietnamese is now the subject of an appeal submitted to the VSCA. A Chinese interpreter commented that sometimes street language is used in transcripts and it is important that court interpreters are across commonly used jargon words. The respondent added that sometimes simple terms, such as ‘100k’ meaning ‘$100 000’, are mistranslated in the transcript.

When asked how frequently alleged jargon and/or code words are confused for everyday speech, a Vietnamese court interpreter said it is a recurring problem and is seen in almost every Vietnamese drug-related trial. A Vietnamese court interpreter also said that these problems have not been addressed because it appears to be too difficult for counsel to understand the technical problems involved in finding lexical equivalence between Vietnamese and English. The respondent added that there seems to be reluctance to allocate resources to resolving these issues due to the cost involved. Another Vietnamese court interpreter said an example of not being able to find a lexical equivalent for alleged code words is in relation to the Vietnamese word ‘ây’ which is frequently translated as ‘thingy’. A Mandarin/Cantonese court interpreter said it happens ‘here and there’ and that they are mainly meaning-based errors, adding that quite often these errors go undetected and not all court interpreters get to see the translated transcript. The respondent added that these are language proficiency issues, not problems with the judicial system.

As asked if transcripts contain everyday English or if a particular style is adopted for court purposes, the responses from LET were varied. One Mandarin/Cantonese LET said the transcripts are not skewed towards a language peculiar to the courts, and another stated that sometimes it depends on the fluency of the LET. A Vietnamese LET commented that although they try to produce transcripts in everyday English, sometimes there might be something like three code words in one sentence. In relation to difficulties experienced when producing transcripts for evidentiary purposes, one respondent identified physical and mental exhaustion due
to intensity of the job. It was stated that while they try to produce an accurate translation of what was said, they are aware there is a possibility they may be subpoenaed to give evidence. However, the same LET added that in 27 years of producing translated transcripts from Vietnamese, the participant had never been subpoenaed to appear in court. The LET added that they really need training on how to respond to questions from barristers. A Mandarin/Cantonese LET said that jargon, code words and slang cause difficulties for translators and added that some sectors of society are more likely to use slang than others.

An Indonesian LET commented that it was difficult to convey sense rather than literal meaning, further stating that some other issues causing difficulty include the quality of the audio recording of the source text, the occasional mixing of languages (Javanese and Indonesian), and lack of access to the general context of the conversation. A Vietnamese LET stated that often the conversation in the source text is not coherent due to lack of context and because conversation participants may suspect the call is being intercepted. The LET added that they might also be using coded terms and that, ‘if we don’t understand what is said within the context then we don’t put it down’. The participant cited a murder trial and recounted a situation where six Vietnamese interpreters were consulted to come up with the intended meaning of a single phrase; they came up with six different versions. The interpreter stated that even though the utterance was relevant to the fact in issue, it was not used in the end because the interpreters could not agree on a single accurate translation that was considered ‘100 per cent accurate’.

When it comes to dealing with problems and strategies around translation of jargon and code words, LET stated that problems are encountered with both; one said a literal approach is applied when there is uncertainty about the use of code words and/or jargon. A Mandarin/Cantonese LET commented that with Chinese languages it is less of a problem in terms of context because the rest of the utterance will simply fall around the word or words. However, the same interpreter noted that in these instances, footnotes are very important to explain what is happening in the text. An Indonesian LET stated that sometimes one is not sure if a code word is being used, but after a period of monitoring you can sometimes work it out within the context of the conversation. This same LET added that Indonesians are elliptical in the way they talk, emphasising that context is very important. Most LET interviewed said no
instructions were given on how jargon and/or code words are to be translated. One participant said instructions in this area varied between law enforcement agencies.

LET were divided when asked if they see it as an advantage or a disadvantage to be briefed on the meaning of jargon/code words. One said it is best not to know about the meaning of code words as it may influence the translation and compromise the objectivity of the transcript, citing the code of ethics which should be adhered to. Another LET supported this view, saying it should be left to the LET to work it out, adding that while they need background information from surveillance about movements of the person of interest, including connections and names in a general sense, they do not need to know the meaning of code words. However, two other LET had a contrasting view to the effect that being briefed on the meanings of jargon and/or code words would be of significant advantage. None of the LET participants had been required to defend their translated transcripts in drug-related trials.

CTL indicated that sometimes they encounter difficulties concerning translating jargon, cover and/or code words in a military context. When this is the case, they either consult other analysts/linguists or provide a literal rendition of the words in question in the translated transcript. One participant noted that there are always new jargon, cover and code words relating to criminal activity, depending on the level of the cell under surveillance, adding that it usually becomes clear when the information is correlated with other sources of information. Provision of background information about the target was again emphasised as an important factor assisting in the translation process. According to all CTL participants, it was without question that briefings and supporting documentation revealing the meaning of jargon and/or code words was of significant advantage and ‘absolutely essential’ to the linguist. None of the participants had been in a situation where they were required to defend the accuracy of their translations.

CTS were asked what difficulties they had noted that linguists experience when asked to translate coded speech. One responded that they usually translate literally. Another also commented that linguists take a literal approach to translating code words, but the translations are sent for further analysis. The participant further added that linguists are able to comment on what they think the code word means, but they do not own the process. It was stated that CTL are given a list of code words as they have exposure to intelligence product and this list makes it easier for them during the
translation process. One participant noted having witnessed misinterpretation of code words that had a direct adverse effect on operational outcomes.

CTS were also asked if they considered it to be either an advantage or disadvantage to brief CTL on the meaning of jargon/code words. All participants stated that it is of a definite advantage as the list provides the linguist with a trigger point to focus on. One participant added that it also provides the linguist with the ability to cherry-pick for relevance based upon the information available to them. Asked what instructions are given to CTL in relation to how jargon and/or code words should appear in transcripts, CTS stated that the linguist should document both the code word literally and provide the meaning in translator’s notes.

Summary: Unique terminology in transcripts

The questionnaires returned mixed responses from barristers and court interpreters in relation to whether participants thought that ‘unique’ terms were used in translated transcripts. The responses ranged from ‘never’ to ‘most of the time’. However, the results from interviews revealed that translated transcripts routinely contain terminology unique to the judicial process, particularly in relation to drug-related crime. Participants identified ‘thingy’ as being a unique term that had appeared in transcripts translated from Vietnamese and Chinese and had been observed in transcripts in New South Wales courts since 2000. ‘Gear’ was also identified as a word frequently used incorrectly in Vietnamese translated transcripts.

Terms of address such as ‘lass’ and ‘lad’ were also identified to be unique terms that appear in Vietnamese drug-related transcripts, which have the potential to distort the evidentiary process. It was stated that these problems identified in translated transcripts could be attributed to the absence of independent quality control of the transcripts before and during the trial.

4.3.7 Summary

Interviews conducted with judicial officers revealed an indication of the extent to which, from their experience, problematic areas associated with translated transcripts potentially or actually adversely affect the judicial process. It appears that while participants acknowledged there are some issues with the translated transcripts that cause disruption to trials, they are infrequent and are usually quickly resolved.
Judicial officers cited ‘thingy’ and ‘gear’ as problematic words occurring in translated transcripts, but it was an issue that had only recently become prevalent. They also stated that translated transcripts are generally accepted as accurate at the commencement of the trial, although it was acknowledged that a notable lack of available resources precluded adequate quality control before translated transcripts are used in court.

The results of interviews conducted with judicial officers are summarised as:

- Sometimes trials are disrupted due to the disputed meaning of words contained in translated transcripts.
- The words ‘thingy’ and ‘gear’ appearing in translated transcripts seem to take on a variety of meanings.
- Translated transcripts are generally accepted as ‘accurate’ before a trial begins.

Barristers also stated that the starting point, in relation to translated transcripts used as evidence, is that they are taken to be accurate although it was acknowledged that errors probably go undetected. It is interesting to note that this is not seen as a problem unless the alleged errors fall within an area of the translated transcript that is specifically related to a fact in issue. This may therefore explain why there is a seemingly high tolerance for errors in translated transcripts, as only certain elements of text are considered important enough to be challenged.

It was stated that when the alleged accuracy of transcripts is in question, it is usually because the accused or a relative and/or friend of the accused has detected a problem. Court interpreters are routinely consulted to help resolve disputed areas of translated transcripts. No quality control procedures are in place to ensure the accuracy of translated transcripts before being presented as evidence in court due to resource constraints. Some terms are considered unique to transcripts translated from Vietnamese; for example, ‘lad’ and ‘lass’. Participants noted ‘thingy’ in translated transcripts as an unusual word and they appeared unsure of how it had been translated and why.

The results of interviews conducted with barristers are summarised as:

- Translated transcripts are usually considered accurate at the start of a trial.
- Resource limitations preclude proper quality control of translated transcripts before a trial begins.
• Errors contained in transcripts are unlikely to be detected.

• Words such as ‘lad’, ‘lass’ and ‘thingy’ are considered odd terms used in translated transcripts.

    Summarising the main points extracted from questionnaires, barristers indicated that translated transcripts:

    • are not always accurate
    • only sometimes contain natural English expression
    • contain distortions in meaning that go undetected
    • have contained language considered unique to the legal process
    • have contained errors that have disrupted and caused significant delays in court proceedings
    • are assessed as presenting difficulties when examining and cross-examining through court interpreters
    • generally provide the court with an objective account of what was contained in the source text
    • may contain discrepancies arising from deficiencies in translator training, accreditation standards, workplace influence and background information and/or intelligence support
    • probably contain a genre of language unique to the law enforcement environment
    • are of a quality that potentially has an adverse effect on the element of fairness in the judicial process to an unacceptable degree.

    Summarising the main points extracted from the questionnaires, court interpreters indicated that translated transcripts:

    • are not always accurate
    • only sometimes contain natural English expression
    • at least sometimes contain distortions in meaning
    • have contained language considered unique to the legal process
have contained errors that have disrupted and caused significant delays in court proceedings

when used as evidence forming the basis of counsel’s questions, present at least a challenge and some difficulty for court interpreters to interpret accurately

generally provide the court with an objective account of what was contained in the source text

contain discrepancies arising from deficiencies in training, accreditation standards, workplace influence and background information and/or intelligence support available to those who produce translated transcripts

probably contain a genre of language unique to the law enforcement environment

are of a quality that, to some degree, has an adverse effect on the element of fairness in the judicial process.

It is evident that court interpreters are well aware that translated transcripts contain significant and frequent errors, of which only some are challenged if they directly relate to a fact in issue or if a witness or relative and/or friend of the accused detect the error. Court interpreters report not alerting the court to errors in transcripts as a matter of routine, as they consider the veracity of transcripts to be a procedural issue for the court to resolve. However, when the alleged accuracy of translated transcripts is in dispute, court interpreters feel they are often and unfairly called upon to help resolve these issues, citing the practice as a possible conflict of interest.

In relation to alleged use of jargon and code words, as reflected in transcripts, it appears that while it is not such a problem for Mandarin/Cantonese interpreters, it is very much an issue for Vietnamese court interpreters. They say transcripts often contain words that have been incorrectly translated such as ‘lad’, ‘lass’, ‘a piece’, ‘gear’ and ‘thingy’, which causes distortion of meaning and confusion for court interpreters, making their job more difficult. The incorrect translation of reference words and kinship terms of address was reported to affect Vietnamese court interpreters more than Mandarin/Cantonese interpreters, with Vietnamese court interpreters citing use of ‘thingy’ as problematic in this area. It was universally stated
that no quality control measures are in place to check the alleged accuracy of translated transcripts.

The stated causes of these problems related to proficiency of those responsible for producing translated transcripts and the influential effect of the working environment in which they are produced. At least three court interpreters said a workplace culture does exist in relation to producing translated transcripts from Vietnamese.

**Summary of LET interviews**

Kinship terms and other terms of address were also noted as presenting difficulties for producers of transcripts from all LOTE represented in this research resulting in ambiguity of translated transcripts. While translator’s notes would help resolve the problem, it was stated by LET that translator’s notes were discouraged so as not to raise doubt about the accuracy of the transcript.

LET also identified tense as a problematic area of translation as Asian languages do not usually make explicit ideas of tense. It was stated that translators use their discretion based on the context of the conversation when determining tense to be used in the target text.

The responses from LET were varied when asked to comment on the value of access to intelligence data. Some said there are clear advantages and others said it was not necessary. However, all agreed that background information was important.

All LET said no quality control measures were in place to scrutinise translated transcripts for alleged accuracy.

In summary, LET indicated that:

- They did not feel integrated as part of the investigation process.
- NAATI accreditation standards bear only some relevance to the skills required of transcription tasks.
- Transcripts are objectively translated most of the time.
- They were satisfied with how their translations were presented as transcripts.
- Full access to intelligence data and formal analysis training would improve their ability to produce more accurate and reliable translations.
- They had never received analysis training relating to law enforcement activity.
The level of access provided to background information was poor for most respondents.

The working environment did not influence the way they translate.

They felt trusted as much as anyone else in the workplace.

In summary, CTL indicated that:

- They felt integrated as part of an operations team.
- Interpreting and translation skills have some relevance to the skills required of transcription tasks.
- Transcripts are objectively translated most of the time.
- They were satisfied with how their translations were presented as transcripts.
- Full access to intelligence data and formal analysis training definitely improved their ability to produce more accurate and reliable translations.
- They had received formal analysis training.
- The level of access provided to background information was good to excellent, for most respondents.
- The working environment did not influence the way they translate.
- They felt trusted as much as anyone else in the workplace.

Summarising the main points from this section:

- Judicial officers, barristers and court interpreters noted use of ‘thingy’ as it appeared in translated transcripts as being problematic to effective flow of communication in court. They also noted that ‘gear’ seemed to be used in translated transcripts instead of more optimally approximated words, such as ‘stuff’ or ‘things’. The terms ‘lad’, ‘lass’, ‘bro’, ‘sis’ and other terms of address used in translated transcripts were reported to appear unique to the legal environment.
- While judicial officers and barristers said translated transcripts are considered accurate before a trial begins, they acknowledged insufficient resources are available to enable implementation of proper quality control procedures to
check the alleged accuracy of translated transcripts before they are used in court.

- LET producing translated transcripts said they do not feel like they form part of an investigative team. CTL performing similar tasks reported feeling fully integrated as part of an operations team.

- LET producing translated transcripts do not receive analysis training. CTL receive analysis training as a core subject.

- LET were divided in relation to whether they wanted or needed access to full intelligence data with reservations expressed in favour of remaining impartial.

- LET feel they do not receive enough background information/intelligence support. CTL performing similar tasks receive full access to all available intelligence data and support.

- LET producing translated transcripts do not receive language for specific purposes training. CTL performing similar tasks undergo comprehensive specialised training.

- LET and CTL said they felt trusted to produce accurate and reliable translations.

- LET and CTL said they felt able to produce objective translations that were not influenced by the working environment.

- LET and CTL use their best judgement to negotiate the translation of meaning along the spectrum of literal to pragmatic approaches.

- No particular theoretical approach to translation underpins the strategies LET and CTL take, but it was generally stated that they tended to convey equivalence at word level when context or meaning is in doubt.

- CTS said CTL are well trained and that appropriate specialised language training and full intelligence support is imperative to enable linguists to apply context to what they are translating.
4.4 Tier 3 – Court transcripts

4.4.1 Introduction

Discourse analysis conducted on publicly available court transcripts of trials observed at Tier 1 provided data relating to how translated transcripts were used in court to support the evidence presented by the Crown. The court transcripts also provide valuable data concerning the effect that translated transcripts in dispute have on judicial processes. These court transcripts form an important part of the research design enabling triangulation of data, which verifies the observations made in Tier 1 and the comments participants made during interviews conducted at Tier 2.

The data obtained during Tier 1 (observation) and Tier 2 (questionnaires and interviews) provided a focal point from which to examine key areas in court transcripts relating to style and accuracy and how they are used as evidence. A brief summary of Tier 1 and Tier 2 is provided.

In terms of alleged accuracy relating to court transcripts, data collected in Tier 1 and Tier 2 revealed issues associated with:

1. Use of ‘thingy’ was observed in Tier 1 and was described by participants in Tier 2 as having been a problematic word used inconsistently in translated transcripts.
2. Alleged use of ‘gear’ to mean drugs was observed in Tier 1, and was also described by participants in Tier 2 as having been challenged in terms of its use in translated transcripts.
3. Terms such as ‘bro’, ‘sis’, ‘lad’ and ‘lass’ were noted as unusual terms, which appear to be unique to translated transcripts used in court.
4. Reference words, kinship terms, jargon and code words appearing in translated transcripts were observed in Tier 1 to be problematic and reported by participants in Tier 2 to present difficulties during the judicial process.
5. Delays in judicial procedures were reported by participants in Tier 2 to be attributed to the disputed meaning of what was contained in translated transcripts.
6. Quality control of translated transcripts appears to be mostly left up to family members and/or friends of the defendant and/or any court interpreter available
to clarify issues of accuracy concerning translated transcripts as they arise during judicial proceedings.

From the key areas identified in Tier 1 and Tier 2, court transcripts at Tier 3 were analysed for issues relating to style and accuracy, but particularly in relation to alleged code words (specifically the words ‘thingy’ and ‘gear’). Kinship terms of address were also examined. Analysis of court transcripts reveals how translated transcripts help the court interpret the meaning of recorded conversations admitted as evidence. The data in this section were retrieved from court transcripts of the same trials represented in Case study 1 and Case study 2. Unfortunately, the court transcripts of the trial designated Case study 3 were unavailable for viewing as the trial was under appeal at the time of conducting this research. Alleged accuracy relating to the translated transcripts presented as evidence at the trial of Case study 3 was discussed at Tier 1 (Section 4.2.4).

4.4.2 Alleged code words – Case study 1

Introduction

Court transcripts from Case study 1 reveal that the trial judge held concerns about alleged code words and their meanings contained in the translated transcripts presented by the Crown and explained by an expert witness (Victoria Police officer). Observation of the trial revealed that ‘thingy’ was a word that raised doubt relating to the alleged accuracy of translated transcripts presented during the trial.

Results

In Case study 1, the alleged meaning of code words proffered as evidence by an expert witness drew caution from the judge. The trial judge made clear to the court what is, and what is not permissible when proffering evidence relating to the meaning of drug-related code words. His Honour’s comments, as recorded in the court transcript, are as follows:

Page 63 line 8: His Honour addressing the Crown prosecutor:

Now look, this is not an exercise in [police officer – name withheld] putting his interpretation on what is being said but rather [police officer – name withheld] can interpret for the jury particular slang or terms of art, code words.

Page 63 line 20: His Honour addressing the expert witness [police officer]:
What you are being asked about is words that have particular meaning to you in your experience in the drug culture, not an interpretation of what you think these people meant by particular phrases. It might not have a particular meaning in the drug culture. Do you see the distinction?

Pages 63–64: The judge provided guidance to the jury in relation to the types of evidence expert witnesses can provide:

someone who has an expertise in a particular field can give expert evidence about things that the jury may not be aware of and go beyond common parlance and common sense, such as, in this case, particular words used in the drug subculture and their meanings, that is a matter of expert evidence and that is what [police officer - name withheld] is giving evidence about.

Page 68 line 1: The prosecuting barrister addressing the judge (in the absence of the jury):

the expert witness [police officer] is accepted as an expert in the drug jargon and codes, generally speaking, from his experience. In my submission, his expertise goes further than that to assist this jury, into the Vietnamese drug subculture and, in particular, this family, these people and all the offshoots from [name withheld] to [name withheld].

Page 68 line 7: His Honour replies:

If these people use a particular word to mean something, like I think ‘thingy’ was in this category?

Page 68 line 9: The prosecutor responded in the affirmative.

Page 68 line 10: His Honour continued:

That was allowed through and [the Defence counsel – name withheld] didn’t object and I think that just gets through

The remarks made by the judge and prosecutor provide an example of how complex the rules of evidence are when translated transcripts containing alleged jargon and/or code words are used for evidentiary purposes in court, particularly where expert witnesses are giving evidence and assigning meaning to alleged code words. In this case, the judge clarified the scope within which the expert witness, a police officer, can testify in relation to the alleged meaning of jargon and/or code words contained in the translated transcript. Evidence given relating to the meaning of ‘thingy’ was noted to have caused some concern to His Honour who indicated that
he had reservations about the evidence proffered relating to the accused allegedly using ‘thingy’ to mean drugs.

During the trial, there was further discussion about the meaning of words and phrases contained in the translated transcript. Addressing the judge, the prosecuting barrister said:

as they sit now, these are, beyond reasonable doubt, accurate translations.

His Honour responded (page 228 line 15):

And just because that is an accurate translation doesn’t mean that another possibility isn’t also an accurate translation. There is more than one way to translate a sentence.

The prosecuting barrister replied (page 228 line 19):

Our concern was we end up bringing in our own interpreter who did the initial interpretation. We don’t want to reopen our case and go through all of that rigmarole.

The defence barrister added (page 228 line 24):

The words that are uttered have been accurately translated. As to what they mean in the context is another matter.

Interestingly, during this discussion the judge made a distinction between what is a translation and what is an interpretation, indicated by the following exchange with the Prosecutor (Page 229 line 10):

Now that it’s been cleared up, that there is no dispute as to the interpretation.

His Honour (Page 229 line 13):

No, there is no dispute as to the translation.

It is clear from this exchange that a translated transcript is considered an accurate account of exactly what was said without applying context, while an interpretation of the translation is resolved through the adversarial judicial system.

As revealed during observation of this trial, a Victoria Police officer provided expert evidence to the effect that ‘thingy’ means drugs. Relating to alleged accuracy, ‘thingy’ again became problematic when the prosecution barrister was examining the witness. In reference to an intercepted telephone conversation, the prosecution barrister asked the witness:
In that call you also mention the word ‘thingy’. It should be quick, will not ‘thingy’. What did that mean when you said that?

The court interpreter translated the question from English to Vietnamese and the witness responded in Vietnamese, which was then interpreted into English and heard by the court as:

I’m not fixing the water pipe every day. I go and do painting and do other things, and now she want me to fix her water pipe. I said to her that I go home and I get the tool. I have no other thinking.

At this point His Honour interjected:

Just a moment. Madam interpreter, is there a Vietnamese word ‘thingy’? I wouldn’t have thought so, but is it? A word that is actually – I notice you use the word when you are translating, ‘thingy’. Is there a Vietnamese word ‘thingy’? (Page 233 line 12)

In response, the court interpreter said ‘No’.

Addressing His Honour, the Prosecutor said:

It concerns me, I understand what Your Honour is trying to do with the interpreter.

His Honour responded:

I am just trying to clarify that she is interpreting a word as ‘thingy’ into Vietnamese, and you are making a thing about this word ‘thingy’. I don’t know what the Vietnamese word is in the actual phone call, what Vietnamese word has been translated by this translator into ‘thingy’. I don’t know, do you know?

After a short exchange with the Prosecutor, His Honour asked the interpreter:

You heard the call played, Madam Interpreter, did you hear the word ‘thingy’ played in the call?

The interpreter replied:

I can’t make up that. What I translated to him, I said that the prosecutor say the word ‘thingy’ in here, and I said to him, ‘That word there, what does it mean about that?’ I put it exactly.

His Honour:

You put the English word to him, didn’t you? I’m not being critical of you at all. It’s just that there is a potential problem that’s all.
Interpreter:

I did say ‘thingy’ in Vietnamese means, ‘thing, thing, something what to him’.

That is very difficult to say when hearing in Vietnamese, Your Honour.

His Honour retired the jury so an effort could be made to clarify the meaning and use of the word ‘thingy’. The court transcript does not record the outcome of any decision made about to how the word is to be used or interpreted. Observations made by this researcher at the time these discussions took place indicated that the problem was too difficult for any definitive decision to be made in relation to how the word should be used or interpreted.

Examination of witnesses based on translated transcripts is inherently complex, and in this trial caused some concern for the trial judge. His Honour expressed his concerns (Page 276 line 10):

This process concerns me. You remember the old thing about Chinese whispers, whisper something in someone’s ear, they whisper in the next person’s ear and what comes out at the end of a chain of three or four people. Here we have got a conversation between two people in Vietnamese three and a half years ago; you’ve got a Vietnamese interpreter who was employed by the police to do his or her best, no doubt, to interpret these conversations; so you’ve got an interpretation of the conversations, and that is what we are reading from. It’s been agreed this is an accurate translation, because there is an important difference between a translation and an interpretation. So we’ve got the original conversation, we’ve got a translation of the conversation we’ve now got in English – you put in the English translation through this interpreter, who uses her interpretive skills to put it to him in Vietnamese, he hears it, he responds in Vietnamese, It comes back through her to you in relation to what was said in Vietnamese by someone else three and a half years ago which has been interpreted by a different interpreter. It sounds like a chain of Chinese whispers to me. So that fine definition as to what people said and what they meant and how it should be interpreted, it is very difficult in this context of cross-examining a witness. I’m not blaming you for it. I think it puts you in a very difficult position.

The Prosecutor raised concerns that this discussion was taking place in the presence of the witness; that the court interpreter was interpreting it for him. His Honour explained to the Prosecutor that the witness is entitled to hear what was
being discussed as he is also the accused and is a party to the trial. Explaining to the Prosecutor the difficulty the jury has in making sense of the transcript His Honour said (Page 277 line 19):

the jury haven’t been able to hear what was said in English and interpret it as they might normally do. What they have got is they have heard something in Vietnamese; they have a transcript of someone else’s translation, as opposed to interpretation. They now have your puttage of this translation through this interpreter, this witness through this interpreter in English, which is in turn interpreted by another interpreter into Vietnamese. I’m not critical of anyone; I’m just saying we have to be careful about this process.

Emphasising the importance of the translated transcript to the Prosecution’s case, the prosecution barrister said (Page 279 line 6):

The point I want to ultimately close to the jury on is that these are accurate translations. Otherwise it’s totally devaluing the Crown case.

His Honour replied (Page 279 line 11):

I haven’t said in the presence of the jury there might be another interpretation; I have carefully said that in the absence of the jury. But I know from my long experience that is frequently the case, and that’s all.

There was further discussion about complications associated with the process of putting questions to the witness (accused) through an interpreter based on information contained in the translated transcript. The defence barrister said his client had spent ‘not an insignificant amount of money having a translator look at all of this’ and added that ‘his mum was involved’ in the checking of the translation and stated that ‘there was nothing of any material’.

In the absence of the jury, the prosecution barrister raised his concern with the judge that the jury may be left with the impression that the translation is not accurate. The judge said he would make it clear to the jury that it is a question of what the translated transcript means. The Prosecutor said he would like the jury to hear that the Defence has had its ‘own interpreter cast an eye over it and they are happy with the translation’. To which the defence barrister clarified ‘… of each word’.

As a result of these discussions concerning alleged accuracy of the transcript, the trial judge briefed the jury (Page 285 line 1):
Ladies and gentlemen of the jury, there is something I should make clear to you and I think I already have, but I want to make it as clear as I can. The Defence have conceded and admitted that the translation contained in the transcripts is an accurate translation. Nothing I have said takes away from that proposition at all. The issue is how it is interpreted and particularly in light of the circumstances of it occurring three years ago. I was highlighting the difficulty involved in this process that makes it difficult for the Prosecution and also makes it difficult for the accused, you might think. There is no suggestion that the transcript is inaccurate. In fact, the Defence have quite properly had the transcript checked and that is why they have conceded that it is an accurate transcription. That is, the words are accurate. The question is what does it all mean.

The Prosecution alleged the jargon and/or code words the accused used that appeared in the translated transcripts presented as evidence in Case study 1 were:

1. Page 63 line 3: ‘Thingy’ alleged to mean an ounce of heroin.
2. Page 63 line 15: ‘One’ in the phrase ‘The other one’ alleged to mean another ounce of heroin.
4. Page 74 line 6: ‘Hours’ alleged to mean ounces of heroin.
5. Page 75 line 10: The term ‘the amount of time taken to do the work’, in that case, ‘the hour’ was alleged to be a term for ounces of heroin.
6. Page 76 line 31: ‘Come pick me up’ alleged to mean to come and pick up the heroin.
7. Page 77 line 31: ‘Come to pick you up’ alleged to mean come and pick up the ounce of heroin.
8. Page 78 line 27: ‘Coming to have fun’ alleged to be talking about picking up of heroin.
9. Page 79 line 20: ‘Will pick you up there’ alleged to be talking about the picking up of heroin.
11. Page 83 line 26: ‘two items’ alleged to mean two ounces of heroin.
12. Page 84 line 4: ‘Two thingy’ alleged to be reference to two ounces of heroin.
13. Page 84 line 27: ‘thingy’ alleged to be used in relation to a quantity of heroin.
14. Page 85 line 14: ‘10’ alleged to be talk of $10,000.
15. Page 87 line 6: ‘13’ alleged to mean $13,000
16. Page 91 line 4: The term ‘pick up’ is alleged to be interchangeable with ‘to go out’ which is alleged to indicate another exchange of heroin.
17. Page 92 line 5: ‘$8.50’ alleged to mean ‘$8500’.
18. Page 231 line 21: ‘Fix the water pipe’ put to the witness to be a code used by the witness.
19. Page 232 line 4: ‘thingy’ put to the witness as a term used when talking about drugs.
20. Page 234 line 13: His Honour addressed the jury: ‘the Prosecution say that the word “thingy” means drugs, but there is some issue about what word was used during the conversation, it seems to me, anyway. I think we need to sort this out given the importance the Prosecution puts on it.’
22. Page 275 line 15: ‘same trade’ put to the witness to refer to drug dealing.
23. Page 286 line 25: ‘Lightening speed in recent time, get ready’ put to the witness means that [the accused] is supplying people with heroin and means that [the accused] anticipates further supplies of heroin to people.
24. Page 288 line 13: ‘This one, the whole’ put to the witness as talking about one ounce [of heroin].

These extracts demonstrate the diversity of alleged jargon and code words associated with this particular trial. The judge corrected the Prosecution several times in relation to how far alleged meanings of words and phrases could go. The word ‘thingy’ performs a range of grammatical functions. Use of ‘thingy’, by court transcript line number, is provided in Appendix A.

An expert witness (Victoria Police officer) said ‘thingy’ means an ounce of heroin in some contexts and relates to drugs generally in others. In addition, it was stated that ‘good thingy’ means ‘good heroin’. However, a Vietnamese court interpreter during the trial informed the judge there is no Vietnamese word for ‘thingy’. The alleged use of the word and how it appears in translated conversations
caused significant confusion during the trial resulting in extensive delays in proceedings to have disputed sections of translated transcripts resolved.

**Figure 4-20: Coded utterances by word, phrase and/or figure – Case study 1**

Figure 4-20 shows that alleged coded utterances used by the accused were in the form of a phrase rather than individual words, with alleged coded speech in the form of figures used less frequently (usually in abbreviated forms to denote larger amounts of money).
Figure 4-21: Grammatical use of the word ‘thingy’ – Case study 1

Figure 4-21 shows that, chronologically, ‘thingy’ was quoted frequently from translated transcripts of telephone intercept and listening device recordings and was referred to in legal discussion concerning its use throughout the trial. Grammatically, ‘thingy’ was placed in English sentence structures of translated transcripts in positions indicating its use as a noun, a verb, an adjective and an adverb, but in most cases its use was undeterminable. The peaks showing increased occurrence of ‘thingy’ correlate to periods throughout the trial where lengthy courtroom discussion ensued about the correct meaning and use of ‘thingy’. The same pattern is evident when plotting the data collected from court transcripts relating to Case study 2 as will be shown in the next section. Relative grammatical use of the word ‘thingy’ during Case study 1 is shown in Figure 4-22.

Participants interviewed during the Tier 2 collection phase said ‘gear’ was also a contentious term used in transcripts. In this case study, ‘gear’ appeared in the translated transcript on:

1. Page 217 line 9: ‘I concern that the gear won’t be available for you in time, damn it.’

2. Page 273 lines 9, 22 and 26: Prosecutor puts to the witness that ‘gear’ refers to heroin. The court interpreter used the word ‘stuff’ when interpreting the same Vietnamese word that was translated as ‘gear’ in the transcript.
Summary

In summary, ‘thingy’ is a word used in transcripts that appears sporadically and, according to the expert witness in this trial (a Victoria Police officer), was alleged to be used to refer to drugs within the context of certain utterances. However, when questioned by the trial judge, an accredited and experienced Vietnamese court interpreter stated there is no Vietnamese word for ‘thingy’ within the context of which the interpreter was required to convey the intended meaning.

How the Prosecution in this case interpreted the meaning of words and phrases in the translated transcript was clearly of concern to the trial judge who frequently provided direction on how expert evidence may be given about drug-related code words and jargon, and how the prosecution barrister conducted his questioning based on extracts of the translated transcript. While the trial judge acknowledged that both the Prosecution and the Defence agreed the translated transcripts were accurate, problems were encountered when questions were put to the witness/accused through a Vietnamese court interpreter where the meaning of terms and phrases were skewed either intentionally or unintentionally to facilitate the flow of communication. This helps explain why the veracity of words, such as ‘thingy’, appearing in translated transcripts has remained unchallenged. The words ‘thingy’, ‘gear’ and inferences the Prosecution interpreted from the translated transcripts appear to have caused the trial judge some concern. Further analysis and discussion of the alleged accuracy of translated transcripts is in Chapter 5.
4.4.3 Alleged code words – Case study 2

Introduction
As reflected in the court transcripts of the trial at Case study 2, the main issue of alleged accuracy concerning translated transcripts involved the alleged meaning of ‘thingy’ along with issues associated with gender attribution. While it is evident that the English translations are clumsy, stilted and frequently do not make sense, counsels tend to mainly address only those issues important to influencing the outcome of the trial. A voir dire that occurred during the trial involving the translator who had produced the translated transcripts focused on very specific aspects of gender attribution and did not address wider issues of ambiguity contained in the transcript (except in relation to ‘thingy’).

Results
Examples the Prosecution provided of code words and/or phrases allegedly used to conceal the true meaning of recorded conversations are:

1. ‘Carton of beer’, ‘A tonne of barbed wire’ to mean a 12.5 ounce block of heroin.
2. ‘Wine bottle’, to mean a pellet of 70 grams of heroin.
3. ‘Bowls of rice’, to refer to a pellet of 70 grams of heroin.
4. ‘Going to the wedding’ to mean the date heroin was collected and inserted internally by the courier.
5. ‘Going to the farm’ to mean transporting heroin as a courier.
6. ‘Papers’ to mean courier’s travel documents or sometimes used as a reference to money.
7. ‘The vehicle has rolled over’ to mean that some of the couriers have been intercepted.
8. ‘Shirt’ and ‘suit’ meaning pellets of heroin or the wrappings in which it was contained.
9. Alleged use of ‘thingy’ to mean drugs, money, and other objects and actions.

The word ‘thingy’ appeared frequently throughout the translated transcripts presented as evidence in this trial. Examples of where the court transcript quotes extracts of the translated transcripts where ‘thingy’ was used are:
1. Page 266 line 18: ‘Without the paper, don’t thingy’. Although it appears as if ‘thingy’ was used as a verb in this context, evidence was given that ‘thingy’ meant ‘money’ (a noun).

2. Page 267 line 8: ‘About that. It depends on how you thingy.’ When the witness was asked by the Prosecutor, through the court interpreter, what was meant by ‘thingy’ in that context, the response in English through the interpreter was ‘Because we wanted to be sure. We had to hold off their papers.’

3. Page 268 line 21: ‘Yes, also, when the day comes, and if I don’t see you guys, then it is your fault if something happens to you guys, thingy.’ When the witness was asked by the Prosecutor, through the court interpreter what ‘thingy’ meant in the above sentence, the response in English through the interpreter was ‘Umm, it meant umm, when the work was done, it had to be done properly, ahh, things, umm, had to be brought back without troubles, problems.’

4. Page 269 line 9: ‘Very bullshit, mother fucker, we must tell them, for now if two, three days before, if not thingy, and it would not be, ah, will not be good, all right?’ When the witness was asked by the Prosecutor, through the court interpreter what was meant by the above utterance, the response in English through the interpreter was ‘That implied my threats to those guys. We advanced them with money, and they there, they borrowed more money, and we advanced them more money when they were there, and if they didn’t do a good job, they didn’t bring the things back, and I was the person who responsible for that, and how could I have report it to by boss?’

5. Page 270 line 2: ‘Don’t need me thingy.’ The Prosecutor asked the witness through the court interpreter what ‘thingy’ means in the above utterance. The court interpreter replied ‘I don’t understand.’ The audio recording of the intercepted utterance was played to the court again for the witness to listen to who stated that he had heard the recording clearly. The witness, through the court interpreter, stated that the recording referred to, ‘To tell [name withheld] to come over to get money for [name withheld] and to tell [name withheld] to come and we lend him some money.’

Following the Prosecutor’s questioning of the witness, a defence barrister addressed the trial judge: ‘Your Honour, it just occurred to me that during that last
line of cross-examination that “thingy” can mean an awful lot of things.’ To which His Honour replied, ‘It can’. Discussion held about ‘thingy’ continued for seven pages of the court transcript and is summarised here.

The defence barrister informed the trial judge that he had consulted a court interpreter who had informed him that ‘thingy’ is a reference word in Vietnamese, which when interpreted back from English into Vietnamese may not be the same word. The defence barrister suggested that the word ‘thingy’ might be ‘sub-optimal’ and that the responses from the witness to the questions put by the Prosecutor did not make any sense (Page 279 lines 15–30).

The trial judge said that a previous trial had experienced the same problem with ‘thingy’ where the Prosecutor (acting on his instructions), insisted that ‘thingy’ was a particular word used in the drug culture. The judge stated that he had received independent advice that it was completely wrong, emphasising that this information is not evidence now. His Honour added that ‘it’s just one of those words’, and stated that like ‘thingamabob’ in English, it carries the similar idea and can mean anything (Page 279 line 31 – Page 280 line 5).

The defence barrister raised his concerns that, in the absence of a transcript in the Vietnamese language, what they are getting is ‘an interpretation of an interpretation’ (Page 279 lines 9–16).

At this point, the trial judge referred to the court interpreter seeking assistance and asked, ‘is there a Vietnamese word for “thingy”? Or are there several words that might be translated into English as “thingy”?’ (Page 279 lines 17–25).

The Interpreter responded:

Your Honour, honestly speaking, as I’m standing here right now, I can’t find an equivalent word to that word in English. I can’t, I don’t, it has to be in a context, because my fellow interpreter just reminded me when we were having a break that the word should be translated as ‘ay’ in Vietnamese, but to me ‘ay’ has to be put in a context, because ‘ay’ could be an adjective, if we say that subject, and then ‘ay’ mean that, become adjective. But then ‘ay’ also means to replace an action that people don’t want to talk about, excuse my example, but umm, newly married couples, for example if they want to make love, and then I want to use the word to make love because of shame or cultural inhibition, or whatever, and they use the word ‘ay’, means …
At this point, His Honour interjected: ‘Thingy’ (Page 279 line 26)

In an attempt to understand how ‘thingy’ is being translated, His Honour asked the court interpreter if she could identify the corresponding Vietnamese word for ‘thingy’ in the audio recording. The court interpreter said she did not pay much attention to the audio recordings in Vietnamese as there was a lot of background noise, and that court interpreters do not have access to the right equipment in the court and the time required to listen to the audio recordings repeatedly in order to determine exactly what was uttered in Vietnamese.

His Honour, addressed the bench:

Whatever they heard they translated as ‘thingy’ anyway. I don’t know how to solve this problem. Except that it’s my strong view, which was my view on the last trial, don’t know how far I got, that not too much weight ought to be put on the various ways in which the word ‘thingy’ can be used, but – and I don’t think you [the Prosecutor] are, you’re asking what did he mean in that context.

Another defence barrister representing a co-accused raised concern that what was being put to the witness was being garbled in translation (Page 282 line 7).

Discussion about how ‘thingy’ should be interpreted continued between the Prosecutor, the defence barrister, and the trial judge in an effort to establish a format that would improve the accuracy of interpreting questions put to the witness where ‘thingy’ appears in the translated transcript. They decided that where ‘thingy’ is used in the transcript, the court interpreter would use the corresponding Vietnamese lexical equivalent heard in the recorded evidence when interpreting counsel’s questions to the witness from English into Vietnamese. The discussion continued between the Prosecutor and the trial judge up until when the trial judge again consulted the court interpreter: ‘There’s no such word, the interpreter says. Is that right, I mean there’s no such literal translation for “thingy”?’ (Page 282 line 12 – Page 284 line 5).

The court interpreter replied: ‘It’s just a made up word by the transcribers – transcripts writers’ (Page 284 line 12).

The discussion continued with His Honour saying, ‘I think the interpreter’s been saying “thingy” because there’s no Vietnamese word for it’ (Page 284 line 6).

The following day, the trial continued with the court interpreter asked to adopt the aforementioned interpreting strategy when ‘thingy’ is used in questioning; that is,
to use the corresponding lexical term heard in the audio recording when putting questions from counsel to the witness in Vietnamese. The Prosecutor, through the court interpreter, asked the witness:

‘At p. 7062 or 3, statement is made by you, third line – quote from the top, “And also you come back, need money to thingy and you (incomprehensible), you must keep the money to spend.” In the course of making that statement, the word “thingy” appears, can you explain what it means?’ (Page 300 line 3).

The response from the witness, through the interpreter, was: ‘The same as I said – as before, this only one.’ The Prosecutor persisted and asked: ‘The word “thingy” appears in that particular quote, does that have any significance or meaning?’ The response, through the interpreter, was ‘No.’ The next question the Prosecutor asked the witness (based on the translated transcript where ‘thingy’ is used) was: ‘You say “One day ahead, no, this evening I thingy.” What did you mean when you used the expression “thingy”?’ (Page 324 line 6).

The court interpreter asked to hear the recording again so she might identify the lexical unit used that corresponds to ‘thingy’ so she could interpret the Prosecutor’s question using the strategy previously decided upon. The recording was played again, and the Prosecutor again asked: ‘What does “I thingy” mean?’ The response from the witness, through the interpreter, was: ‘This evening going to the airport, to come back – to go back.’

The Prosecutor continued and asked the witness: ‘So how do you interpret your use of the word “thingy” – what did you mean when you said – first of all, did you say the word “thingy”? At this point the interpreter began addressing the trial judge but was interrupted by a defence barrister who stated that the witness didn’t say the word ‘thingy’. Discussion continued between the trial judge, the Prosecutor, and the court interpreter concerning difficulty interpreting the word ‘thingy’ (Page 324 line 22 – Page 325 line 10).

The interpreter confirmed for the trial judge that, on its own, ‘the word “thingy” can’t really be translated into Vietnamese’, adding that the Vietnamese lexical unit translated as ‘thingy’ is a reference word (Page 324 line 26).

The Prosecutor put a further question containing the word ‘thingy’ to the witness: ‘Now going to the beginning of that transcript, it’s alleged that you said, “Come in there, mother fucker, take a shower, wash” and then there’s a male speaks
who says “Take a shower” and then “thingy out for good. Take it out for good.” Are you able to explain that conversation?’ (Page 341 line 22).

The interpreter again asked for the audio recording to be played to the court in another attempt to identify the corresponding Vietnamese lexical unit that was translated as ‘thingy’ so she could interpret the question, as required. The recording was played a second time but the interpreter was still unable to identify the corresponding Vietnamese term used. After the recording was played a third time, the interpreter said, ‘I could hear the phone ringing, I could, and follow where they’re talking about having a shower, but I just couldn’t work out what it said when it said “thingy” here.’

At this point the line of questioning in relation to the meaning of ‘thingy’ was discontinued for the day. On subsequent days the court transcript reveals no further disruptions in communication flow through the court interpreter where the word ‘thingy’ was quoted from the translated transcripts. Further references were contained in the court transcript where ‘thingy’ was used in the translated transcripts used as evidence:

1. Page 645 line 28: ‘Not thingy outside, tell the person to go home and I will up there, I will drive the person down here, you know?’

2. Page 647 line 3: ‘Yeah, it is only all right if I go out to take the person in, you know. Take the person in, thingy, and collect the paper at the same time.’

3. Page 648 line 13: ‘And the person remembers that the person thingy, you know, the person, and the stuttering, writes down with two, three incorrect numbers and so on the end, at the end, the person remembers, you know.’

4. Page 1487 line 2: ‘He must hand the paper. Without the paper don’t thingy.’

5. Page 1640 line 7: ‘Don’t thingy.’

6. Page 1645 line 20: A defence barrister, in his closing address, states ‘Now “thingy” is a wonderful word, it seems to apply to everything.’
Figure 4-23: Grammatical use of the word ‘thingy’ over time – Case study 2

Figure 4-23 shows grammatical use of ‘thingy’ throughout the trial chronologically depicted by page number of the translated transcripts. Note the peaks indicating increased occurrence of ‘thingy’, which correlates with increased courtroom discussion about its use and meaning. Figure 4-24 shows relative grammatical use of ‘thingy’ in Case study 2.

**Summary: Case study 2**

In Case study 2 it was evident that ‘thingy’ has become notorious for causing confusion in the courtroom for all concerned. The word frequently appeared
throughout the translated transcripts and was the subject of lengthy legal discussion. Strategies the trial judge introduced in an effort to avoid misinterpretation and ambiguity were applied but appeared to have failed, leaving the interpreter with no choice but to improvise where possible to facilitate the uninterrupted flow of communication during the trial. A court interpreter stated that ‘thingy’ is a word created by whoever produced the transcript.

From analysis of the court transcript of Case study 2 appearance of ‘gear’ in the translated transcripts was not in dispute.

Gender attribution in the translated transcripts was in dispute due to the LET having assigned gender markers based on either intuition or having applied analysis of who was taking part in the monitored conversations. This was resolved through the hearing of a voir dire after which the translated transcripts were edited to reflect non-gender specific terms where gender could not be objectively determined.

A variety of code words and jargon were allegedly used in communications between the accused and other people. The main problem with assigning meaning to terms used in these interpreted conversations was associated with the word ‘thingy’.

4.4.4 Terms of Address

Introduction

The words ‘lass’ and ‘lad’, ‘sis’ and ‘bro’ appeared sporadically throughout court transcripts of Case study 1 and Case study 2 and was noted during the reading of translated transcripts across the three case studies during observation at Tier 1. Research participants stated these terms uniquely appear in translated transcripts, and are not terms translators commonly use when translating documents from Vietnamese to English in the wider community.

Results

The word ‘lass [name withheld]’ was probably translated from the Vietnamese word ‘cô’, or more intimately ‘em’ meaning young woman (for example, Court transcript Case study 2 – Page 807 line 2). In this case, the use of ‘lad’ and ‘lass’ has been used in the translated transcript preceding the actual utterance recorded in the transcript. For example, the translator may either know from fact or assume that the speaker is a young Vietnamese woman named ‘Hoa’; therefore, preceding the translated utterance the translator will designate the call to ‘Lass Hoa’. The translated
transcript is read to the court by an independent barrister for example, ‘Lass Hoa then says ...’. However, during subsequent questioning and legal discussion, this person may be referred to as ‘Hoa’, ‘Miss Hoa’, ‘Lass Hoa’.

The issue of gender attribution was reflected in the transcript of the trial at Case study 2 where the translator of the translated transcript had assigned gender based on an assumption as raised by a defence barrister (page 304 line 13). A voir dire was held and the translator of the transcript was called to give evidence in relation to how gender was attributed to the speaker. It was revealed that there was no concrete evidence to confirm the gender of the speaker or the person being referred to in the recorded conversation. From this point in the trial, where gender attribution was in question, the word ‘person’ appeared in the translated transcript rather than the gender attributions of ‘lass’ or ‘lad’ as assumed by the LET.

Of interest is the frequent use of Vietnamese kinship terms by counsel when referring to Vietnamese names. Vietnamese terms such as ‘Chị’ and ‘Anh’ appeared frequently throughout the court transcripts followed by the person’s name as uttered by counsel. It appears that counsel are unaware of the difference between a Vietnamese name and the kinship term as terms of address such as ‘Chị Tư’, which in this trial referred to the wife of ‘Anh Tư’. So ‘Chị Tư’ in this context means ‘Mrs Four’. ‘Anh Tư’ literally means ‘male four’ with reference to a male who was the third born male sibling to his parents. ‘Tư’ is not the person’s name given at birth, but a term of address. ‘Chị Tư’ literally means ‘older sister four’, but because in this context ‘Chị Tư’ has married ‘Anh Tư’, she takes on his term of address according to his position in his family. ‘Chị Tư’ is not her name given at birth, does not reflect her position in her family, nor would ‘Chị Tư’ appear on any official document. Rather, it is a term of address. In this trial the terms of address, as described above, appeared in the court transcript:

- ‘Chị Tư’ literally meaning ‘older sister four’ or ‘Mrs Four’ (for example, page 270 line 14 – misspelt in the transcript as ‘Chi Thu’)
- ‘Anh Tư’ literally meaning ‘Brother Four’ (for example, Page 270 line 26)
- ‘Anh Sau’ literally meaning ‘Brother Six’ (for example, page 269 line 27)
- ‘Chi Mot’ literally meaning ‘Older Sister One’ (for example, page 809 line 26).
To add to the complexity of name attribution, the court transcript reveals that on occasion the translated transcripts contain other terms of address such as:

- ‘Old man [name withheld]’ (for example, Page 809 line 20)
- ‘Brother [name withheld]’ (for example, Page 1486 line 28).

**Summary: Terms of address**

Use of the terms ‘lass’ and ‘lad’ in transcripts serves a practical purpose of designating assumed gender and age to the speaker in recorded conversations. However, these English terms do not directly correlate to many Vietnamese personal pronouns commonly used in Vietnamese speech. Professional translators do not commonly use the terms ‘lad’ and ‘lass’ when translating documents from Vietnamese to English. It is for this reason that the terms are considered odd or unique terms representing a genre of language unique to translated transcripts presented in court. One barrister explained that the terms ‘lass’ and ‘lad’ are used to help the court understand who is being referred to, because the Vietnamese names are often mispronounced and it is assumed that the jury would not be able to follow the translated transcript unless gender attribution was made explicit when reading the translated transcript to the court.

**4.4.5 Summary**

Deductive reasoning of results at Tiers 1 and 2 led to narrowing the focus of this research in Tier 3 to investigate the alleged use of code words and terms of address. The word ‘thingy’ appeared extensively throughout Case studies 1 and 2 enabling the data to be represented graphically in terms of frequency of use and grammatical application. The results reveal that alleged code words for drugs are based upon an interpretation provided by an expert witness who may not necessarily be proficient in the source LOTE. Rules of evidence relating to interpretation of drug-related code words and jargon are discussed in detail in Section 4.5.4.

The terms ‘lad’, ‘lass’, ‘bro’ and ‘sis’ represent kinship terms of address that appeared frequently in the court transcripts quoting extracts of translated transcripts. It is assessed that there is a significant risk of these terms causing confusion and misleading the jury relating to the status of, and relationship between, the speakers in recorded conversations used as evidence. For example, the term ‘bro’ does not have a literal lexical equivalent in Vietnamese. The word ‘brother’ in English has lexical
equivalents in Vietnamese of the words ‘anh’ (older blood brother or male of around the same age of the speaker) and ‘em’ (younger blood brother; is also used to refer to younger sister, younger male, younger female, one’s female partner such as wife or girlfriend). These Vietnamese words cannot be modified or shortened to mean ‘bro’ or ‘sis’. These abbreviated terms of address in English can only be the result of the translator having interfered, during the translation, to carry across assumed context. This results in the translated transcript containing a register of English language that is informal and commonly used by drug users and traffickers which does not mirror the register of language used in the recorded conversation held in Vietnamese.

4.5 Tier 4 – Appealed decisions

4.5.1 Introduction

The nexus between expert evidence presented in drug-related trials and the meaning of code words in translated transcripts used as evidence has been tested in Australian courts, resulting in some decisions being referred to courts of appeal. The rules of evidence surrounding expert opinion proffered by police officers about alleged code words is important in relation to how information contained in translated transcripts is understood in drug-related trials. As Fishman argues, there are significant problems associated with how translated transcripts are used in court relating to judicial processes and notions of ‘translation accuracy’ (2006). Moreno more specifically argues that in the absence of empirical evidence to support the alleged meaning of code words as proffered by police officers as expert witnesses, there will inevitably be an element of bias in favour of the Prosecution (2006).

This section discusses appeals heard in Australian courts where the grounds of appeal relate to the way in which translated transcripts from electronic surveillance have been used as evidence, and police officers have explained the meaning of alleged code words contained in translated transcripts. It will be shown that appeals courts refer to rulings made in similar trials relating to how code words have been explained by police officers as expert witnesses.

A search was conducted on the AUSTLII website for appeals relating to how alleged code words in translated transcripts from Vietnamese were interpreted and presented as evidence in drug-related trials. A keyword search on ‘code words’ was the method used to identify the cases of relevance to this research.
4.5.2 Expert witnesses and code words

Introduction

This section discusses appeals cases where expert witnesses have interpreted alleged code words for drugs appearing in translated transcripts for the court. Four appeals cases of relevance to this research were chosen from the AUSTLII website. The reports of these cases were retrieved having conducted a global search on austlii.edu.au using the keywords ‘code words’.

Results from discourse analysis of appeals trials reports provides information about how translated transcripts are used in court and provides further evidence of the impact translation errors potentially have on the judicial process. The reports discussed in this section show a variance in what has been considered admissible evidence in relation to interpretation of alleged code words in translated transcripts.

Results – Appeal hearing: Report 1

In *Nguyen v R* [2007] NSWCCA 249 (22 August 2007), the NSW Court of Criminal Appeal considered an appeal by an appellant (Quang Duc Nguyen) who had been found guilty of conspiring to import not less than a trafficable quantity of cocaine. The grounds of appeal against the conviction were:

1. The trial judge erred in admitting opinion evidence from Sgt Luc Nguyen.
2. The trial judge erred in admitting opinion evidence from Sgt Luc Nguyen in the form of drug code tables.
3. The trial judge erred in failing to direct the jury regarding how they were to approach the opinion evidence of Sgt Luc Nguyen.
4. The trial judge erred in failing to direct or warn the jury regarding the caution that needed to be taken when evaluating the evidence given in relation to each separate count on the indictment.

The Court of Appeal noted that Sgt Nguyen had provided a statement containing:

> literal translations into English of each of the intercepted telephone conversations and then added opinions he had formed about what certain words and expressions used in the conversations really meant and opinions he had formed about what the parties to the conversations were really doing or intending to do (para 11).
The Court of Appeal noted that ‘Sgt Nguyen’s command of English is less than perfect’. Sgt Nguyen said he had been with the New South Wales Police Service for close to 20 years and that he had extensive experience listening to recordings of conversations about supply of prohibited drugs. It was also stated that Sgt Nguyen ‘had become extremely familiar with “drug related terminology, drug related prices and the methods of operation” of drug dealers’ (para 15).

Of note, the appellant did not object to evidence relating to the literal translations into English of the intercepted conversations; however, objection was taken to the evidence of the opinions Sgt Nguyen had formed. As there had been no challenge to Sgt Nguyen’s expertise at the trial, it was noted that Sgt Nguyen ‘could give evidence that among drug dealers certain words, not ordinarily used to describe drugs, are used to describe drugs, in the hope of preventing other people who happen to hear what is said knowing what the speakers are talking about’ and that ‘Sgt Nguyen could give evidence “to the meaning of words and expressions recognised as argot of the drug trade”’. The trial judge held that ‘it is impermissible to give evidence of what a person means when he uses certain words and phrases, that is a witness cannot give evidence of what is in the mind of the person who is speaking or speculate as to what he is meaning’ (para 20).

The Statement of Facts presented at the trial included:

1. ‘Charging the battery’ within the context of the intercepted utterance was alleged to refer to preparing heroin.
2. ‘Dong’ within the context of the intercepted utterance was alleged to refer to one thousand dollars.
3. ‘Fridge’ within the context of the intercepted utterance was alleged to refer to an ounce (28 grams) of heroin.
4. The following intercepted utterances were alleged to have contained references to heroin:
   
   Quang: ‘Yeah, brother Quy, it’s me Quang.’
   Quy: ‘Mm I know.’
   Quang: ‘Mm well any news brother?’
   Quy: ‘No news as yet.’
   Quang: ‘No news as yet?’
Quy: ‘Mm.’

Quang: ‘Okay, let me know straight away when you’ve got any news, alright?’

Quy: ‘Mm mm.’

The above conversation was alleged to have meant that Quang was anxious about when Qui/Quy would want to purchase heroin from him.

5. ‘Good looking girl’ and ‘photo’ within the context of the intercepted utterance were terms alleged to refer to good quality heroin.

6. Again the term ‘fridge’ in a further intercepted utterance was alleged to refer to a half-unit (350 grams) of heroin.

7. ‘Labour fee’ within the context of the intercepted utterance allegedly referred to the price of a half-unit of heroin.

8. ‘Catalogue’ within the context of the intercepted utterance allegedly referred to a sample of heroin.

9. ‘The ruler’ and ‘the book’ with the context of the intercepted utterance allegedly referred to samples of heroin.

The trial judge ruled that the Statement of Facts at 1, 2 and 3 above were legitimately expert evidence, but allegations at 4 and 5 were questions of fact for the jury to decide. The judge viewed references to ‘samples of heroin’ as ‘findings of facts’ and not expert evidence. Sgt Nguyen gave evidence at trial to the effect that:

1. ‘Fridge’ was a reference to heroin.

2. ‘Any good looking girl’ refers to good quality of heroin.

3. ‘Photo’ refers to a sample of heroin.

4. ‘80 dong’ refers to 80 thousand.

5. ‘Catalogue’ refers to a sample.

6. ‘Go eat out at restaurant’ refers to the supply of heroin.

7. ‘Car’ refers to half a unit of heroin (350 grams).

8. ‘Bowl of Pho’ refers to one ounce of heroin.

9. ‘Thingo’ refers to money.

10. ‘One exact hour’ refers to half a unit of heroin (350 grams).

11. ‘Clothes’ refers to heroin.
Counsel for the appellant did not dispute that Sgt Nguyen could give evidence based on his specialised knowledge. Neither was it disputed that Sgt Nguyen could give evidence that people engaged in drug dealings often communicate in coded language, and that words and expressions not normally associated with drugs are used by drug dealers to refer to drugs (para 32).

What was in dispute was that: ‘Sgt Nguyen could not give evidence that in his opinion particular words and expressions used in an intercepted conversation were in fact being used by the speakers to refer to drugs’ (para 33). For example, counsel for the appellant argued that Sgt Nguyen’s opinion that the word ‘fridge’ meant heroin was not substantially based on his specialised knowledge and therefore was not admissible under s. 79 of the Evidence Act 1995 (NSW) (para 34).

The Court of Appeal considered other cases relating to evidence that expert witnesses had provided about the meaning of drug-related code words and expressions. In R v David & Gugea (unreported NSWCCA 10 October 1995), the appellants did not dispute the alleged accuracy of literal translations from Romanian into English taken from recordings of conversations intercepted by telephone or listening device. The conversations were alleged to have been about the supply of heroin; however, the appellants maintained that the conversations were about the supply of gold and brandy, and of women for prostitution (para 37). At the trial, a police officer and an analyst/interpreter from the New South Wales Crimes Commission gave evidence that, in their opinion, the speakers were referring to the supply of heroin. The Court of Appeal acknowledged that the police officer could give expert evidence that drug dealers very rarely, if ever, refer to drugs directly, but use coded language to disguise the nature of their activities. The police officer gave evidence that, in his opinion, the subject matter of the recorded conversations was ‘in fact’ the supply of heroin. The Court concluded that so long as the police officer gave evidence that the conversations ‘could’ have referred to the supply of heroin having explained how he reached this opinion, the evidence would have been permissible. However, this was not the case, and because each of the expert witnesses stated that in their opinions ‘the subject matter of the recorded conversations was in fact the supply of heroin, the appeal against conviction was allowed’ (para 41).
The Court of Appeal distinguished David & Gugea in Huynh. In Huynh, the speakers in the recorded conversations sometimes specifically referred to heroin by name, and the subject matter was often referred to in the contexts of prices, values, measurements, quantities and the mixing of cutting agents. The expert witnesses that gave evidence in Huynh stated that, in their opinions, particular parts of conversations were referring to heroin. The Court of Criminal Appeal held that evidence of the expert witnesses was admissible and dismissed the appeal against conviction (para 44).

The Court of Appeal also considered Keller. In Keller, a Federal police officer gave expert evidence that certain words and expressions heard in recorded conversations were references to drugs. The officer also provided a statement to the effect that ‘the words used in the conversations were “consistent with” being a reference to drugs’ (para 50). Further,

the witness had failed to distinguish ‘between an expression of opinion that something spoken was consistent with being a reference to drugs and asserting that something was a reference to drugs’, and because it was not shown by the witness that his opinions were wholly or substantially based upon his specialised knowledge it was decided that the reasoning process of the witness was not sufficiently exposed to establish how his conclusion was based upon his specialised knowledge (para 56).

The officer’s evidence was ruled inadmissible in accordance with s. 79 of the Evidence Act 1995 (NSW) (para 57).

The Court of Appeal ruled that, in light of the decisions made in David & Gugea, Keller and Huynh, Sgt Nguyen’s evidence ‘was not admissible as evidence of expert opinion were that not all of the facts on which Sgt Nguyen’s opinions were based were identified in his evidence and Sgt Nguyen failed to disclose the reasoning process by which he had arrived at his opinions’ (para 63). The Court of Criminal Appeal was not satisfied that Sgt Nguyen’s opinions were wholly or even substantially based on his specialised knowledge (para 64). For this reason, the first ground of the appeal ‘The judge erred in admitting opinion evidence from Sgt Luc Nguyen’ was allowed (para 66).

In relation to the second ground for appeal, ‘The trial judge erred in admitting opinion evidence from Sgt Luc Nguyen in the form of drug code tables’, Sgt Nguyen
provided tables containing ‘literal English translations of Vietnamese words and expressions referring to particular quantities of heroin ranging from 0.2 of a gram to 1 kilogram’ (para 68). It was ruled that if it was shown that the words contained in the tables were terms Vietnamese drug dealers commonly used for heroin or quantities of heroin, and that those words contained in the recorded utterances could be a reference to heroin or quantity thereof, the evidence would have been permissible. However, because members of the jury were not warned against using the tables as a form of dictionary, and that they would therefore be inclined to associate a word with the corresponding alleged meaning in the table, the second ground of appeal was allowed.

The third ground of appeal, ‘The trial judge erred in failing to direct the jury regarding how they were to approach the opinion evidence of Sgt Luc Nguyen’, was also allowed. The failing was that the trial judge did not limit the use the jury should make of Sgt Nguyen’s evidence, and therefore the tenor of the judge’s direction was such that if they accepted Sgt Nguyen’s evidence they should return a verdict of guilty. In summing up, the trial judge told the jury:

The Crown case is that the evidence of the phone calls show beyond reasonable doubt that the accused was running a distribution business in heroin. The Crown case is that the expert evidence of Luc Nguyen that is of the code that is being used discloses that the accused is supplying and agreeing to supply heroin. That gives you the evidence of code in the context of the calls that they are talking of heroin and in the section of the text of the call what is the amount and that you would … accept his expert evidence as to the meaning of the code and accept his evidence as to the fact that they are discussing heroin and as to the quantities of heroin which are being discussed.

The fourth and final ground of appeal, ‘The trial judge erred in failing to direct or warn the jury regarding the caution that needed to be taken when evaluating the evidence given in relation to each separate count on the indictment for appeal’, related to a judicial process and is not directly relevant to the subject of this study.

It was stated at the hearing of the appeal that ‘a witness such as Sgt Nguyen could properly give evidence of considerable cogency, that persons engaged in drug dealings often speak to each other in code and that certain particular words and expressions, which were used in the intercepted conversations, are commonly used
by drug dealers to refer to drugs and that these words and expressions as used in the intercepted conversations could be references to drugs’ (para 87).

The New South Wales Court of Criminal Appeal allowed the first three grounds of appeal and a new trial was ordered.

Results – Appeal hearing: Report 2

In *Pham, Van Diep; Tran John Xanvi v R* [2008] NSWCCA 194 (15 August 2008), the New South Wales Court of Criminal Appeal considered grounds of appeal relating to conviction of the appellants found guilty of 17 counts associated with supply of prohibited drugs including heroin, cocaine and ice (crystalline methamphetamine). Only the first of six grounds of appeal were directly relevant to this research. The first ground of appeal was: ‘The trial judge erred in allowing the expert evidence of Det Sgt Stuart Cadden’ (para 21). In this trial the meaning assigned to the alleged code words in translated transcripts of recorded conversations from intercepted telephone conversations as evidence was provided by a New South Wales police officer in his capacity as an expert witness. The intercepted telephone conversations were almost all in Vietnamese and when translated, did not directly refer to any of the drugs in question. The Court of Criminal Appeal reported that:

> The Crown’s case was that when one appreciated the code that was present one could interpret the conversations as ones relevant to the dealing in drugs in question (para 23).

The appellant’s grounds for appeal were that Det Sgt Cadden did not sufficiently disclose his reasoning as he did not produce a drug code table and drug price table referred to in his evidence, and did not disclose previous matters in which he had been involved. It was argued that this prevented the appellant from adequately testing the evidence or its basis (para 25). It was ruled that the absence of the tables did not detract from the reasoning process the police officer had applied to support his evidence; that is, ‘The absence of these documents did not mean that the witness’ reasoning was not exposed’ (para 29).

The police officer gave evidence that the word ‘cabinet’ is commonly used as a term to refer to the prohibited drug ice. The officer had a number of reasons to make this statement, including his experience and some sources of reference, which were not specifically identified in the Criminal Court of Appeals report. The officer stated that his reasoning was also based on ‘a translation of a Vietnamese word which
literally leads me to believe the word cabinet is an alternate word for fridge’ (para 29). Referring to his notes, the police officer explained:

the word ‘fridge’ in Vietnamese is in my knowledge is made up of two words being To and Lun, now I don’t profess to have the tone marks or the pronunciation correct in those words.

During cross-examination, the police officer explained that the word ‘to’ in Vietnamese means cabinet, and the word ‘Lun’ means cold, and together they form the word meaning a ‘cold cabinet’ meaning ‘fridge’. He gave evidence that this is consistent with drug terminology, specifically in relation to the drug ice or crystalline methylamphetamine. The officer also gave evidence that the word ‘to’ by itself is consistent with reference to the drug ‘ice’ or crystalline methylamphetamine stating that the words ‘to’ and ‘to lun’ are interchangeable.

During cross-examination the officer also gave evidence to the effect that the words ‘old man’ were consistent in previous calls he had seen which is a reference to heroin (para 29).

The Court of Appeal ruled that there was no absence of reasoning on the part of the police officer and therefore the ground of the appeal failed (para 33).

From the information available about this appeal, it appears odd that the police officer was able to provide expert evidence in relation to the meaning of individual Vietnamese lexical units and their combined and individual meanings when the officer admitted to the court he could not properly write or pronounce the Vietnamese words.

The police officer gave evidence that the word ‘to’ (properly written as ‘tủ’) is interchangeable with ‘to lun’ (properly written as ‘tủ lạnh’) and that both terms are consistent in relation to reference to the drug ‘ice’. This is problematic because the word ‘tủ’ accompanies many other words in Vietnamese, which together form words to describe any box type of container, such as a wardrobe ‘tủ áo’ or a safe ‘tủ sắt’. It therefore follows that while the word ‘cabinet’ may be a term used in the drug trade for the drug ‘ice’, it comes down to the lexical choice the translator made about whether to chose the word ‘cabinet’, ‘container’, ‘box’ or ‘trunk’, upon translating the word ‘tủ into English’. There is no lexical distinction in Vietnamese between the words ‘fridge’ and ‘refrigerator’. The Vietnamese words ‘tủ lạnh’ mean both ‘fridge’
and ‘refrigerator’ and cannot be abbreviated so that one or the other Vietnamese word simply means ‘fridge’.

A similar situation arises in translating the Vietnamese word ‘đò’, which in drug-related transcripts is often translated as ‘gear’. The Vietnamese word ‘đò’ also means ‘stuff’ or ‘things’ but police officers have referred to it as a word consistent with drug-related terminology that the accused use. Had the translator translated the word as ‘stuff’, there would be no such evidence relating to the alleged coded meaning for drugs, only that the word ‘could’ be related to drugs.

It is apparent and logical that the police officer’s evidence is mostly influenced by the choices the translator made when preparing the translated transcript. However, it is important to determine whether the monolingual police officer as an expert witness is basing his/her expert opinion on specialised knowledge, training and experience or his/her understanding of an interpretation of an utterance as understood and translated by the translator.

Results – Appeal hearing: Report 3

The importance of the choices translators make in relation to lexical units appearing in translated in transcripts was discussed in the NSW Court of Criminal Appeal in Chen v R [2011] NSWCCA 145 (22 June 2011). The appellant had been convicted on one count of trafficking and two counts of supplying not less than a large commercial quantity of a prohibited drug ‘ecstasy’ (para 1).

The intercepted conversations were in Mandarin and Shanghainese and the translated transcripts were used as evidence in the trial (para 13). At the trial, Detective Senior Constable Zimmer gave evidence described by the Court of Appeal to be ‘a further interpretation of the language (after translation to English) used in the conversations’. The jury was provided with copies of the translated transcripts, which were to be used as an aide memoir. The jury was reminded that the translated transcripts were secondary to the recordings themselves; however, because the recordings were of conversations held in Chinese, they should afford primacy to the transcripts of the conversations as translated (para 13).

The first ground of appeal was that ‘the trial judge erred in admitting opinion evidence from Det Zimmer’ (para 66). Detective Senior Constable Zimmer gave evidence that the conversations were ‘consistent with reference to the prohibited drug ecstasy’. This was based on references in the calls to amounts of money, which in his
opinion equated to amounts of ecstasy. The trial judge referred to Keller v R [2006] NSWCCA 204 and Nguyen v R [2007] NSWCCA 249; 173 A Crim R557 (both discussed in this section) and stated that in Keller, the expert witness’s opinion evidence ‘was not wholly based upon his expertise in the argot of drug dealing …’ and in Nguyen where a police officer gave evidence that the words used in fact referred to drugs, and that the Crown conceded in that trial, that the police officer had: ‘… inappropriately allowed other information he had received to form part of the basis for his opinions’ (para 77). The Court of Appeal held that Detective Zimmer ‘was scrupulous to ensure his evidence was framed in terms of consistency’ (para 79). The Criminal Court of Appeal rejected this ground of appeal.

In some of the calls where it was alleged the accused was talking in code and referring to amounts of ecstasy, the appellant claimed he was a coin collector and was discussing the purchase of coins. In one of the calls the speaker says ‘they’ are ‘very fragmented … all in half pieces, very crushed [broken]’. The translator had crossed out the word ‘crushed’ on the translated transcript and had written the word ‘broken’ above it. This same amendment was made in the transcription of a further call. The appellant had the recorded conversation translated into English by two other independent accredited interpreters who translated the same segment of the source language but used the words ‘scattered’ and ‘segmented’. This was important to the appellant who claimed he was negotiating the purchase of coins and not ecstasy in the calls. As the Court of Criminal Appeal noted, ‘While it is possible to conceive of a “scattered” set of coins, it is not easy to conceive of “broken” coins’ (para 163). The Court of Criminal Appeal considered the context within which the words ‘broken’, ‘fragmented’ and ‘scattered’ may have been used in relation to a discussion about coins and after considerable discussion, as detailed in the Court of Criminal Appeal’s report, it decided the evidence established the appellant’s guilt (para 188).

Results – Appeal hearing: Report 4

In Le v The Queen; Nguyen v The Queen [2011] VSCA 42 (24 February 2011), the Victorian Supreme Court of Appeal considered the grounds submitted by counsel for the appellants found guilty of trafficking in a large commercial quantity of heroin. The grounds for appeal were not specifically related to the alleged use of code words, but the meanings attributed to the figures heard within the context of utterances that collectively were alleged to amount to a sum falling within the
category of a large commercial quantity of heroin. The trial heard expert evidence provided by a Victoria Police officer, a drug investigator with experience in the Asian drug trade in relation to coded language used in the intercepted telephone calls. In the trial, the officer had made a list of words commonly used as code in the heroin trade, but also provided another list of words associated with the trial that he was not prepared to state were commonly used to refer to drugs. These words included ‘meal’, ‘shopping’, ‘bun bao xao’, ‘hui’, ‘kids’, ‘abalone’, ‘disc’ or ‘music disc’, ‘two sisters’, ‘tape of music’, ‘video’ and ‘books’ (para 28).

What is interesting about this trial is appearance of the word ‘thingy’ in the quoted translation of a recorded utterance: ‘So will lend you another CD disc the movie um … Probably another thingy disc (sic)’ (para 29). In this VSCA report the quoted list of words provided by the police officer that could have been referring to drugs did not contain ‘thingy’. The word ‘thingy’ has been noted in the translated transcripts of other drug-related trials where it was alleged the word related to heroin.

**Summary: Expert witnesses and code words**

In *Nguyen v R* [2007] NSWCCA 249 (22 August 2007) expert evidence relating to a Vietnamese drug-related case was proffered by a New South Wales police officer that was a native speaker of Vietnamese. It was shown that the first ground of appeal, ‘that the trial judge erred in admitting opinion evidence from Sgt Luc Nguyen’, was allowed. The decision to allow the appeal was based on the determination that Sgt Nguyen’s evidence was not admissible as evidence of expert opinion because not all the facts upon which his opinions were based were identified in his evidence, and he had failed to disclose the reasoning process by which he had arrived at his opinions.

In *Pham, Van Diep, Tran John Xanvi v R* [2008] NSWCCA 194 (15 August 2008), a New South Wales police officer proffered expert opinion evidence relating to alleged code words and the lexical meanings attributed to Vietnamese words contained in the recorded utterances. Even though the officer did not understand or speak the Vietnamese language he proceeded to explain the reasoning behind his opinion, which was found to be acceptable to the court and the grounds of the appeal failed. The reasoning provided by the police officer as recorded in the appeal report appears to be flawed. This researcher assessed the officer’s reasoning as containing
fundamental grammatical errors when the officer compared lexical equivalents between Vietnamese and English to support his interpretation of intended meaning.

In the *Chen v R* [2011] NSWCCA 145 (22 June 2011), the alleged meaning of code words in translated transcripts were in dispute requiring the assistance of two independent Chinese interpreters. The result was four different alternative lexical translations for a word in contention. Deductive reasoning applied by the court based on the independent translations led to the appeal not being allowed.

In *Le v The Queen; Nguyen v The Queen* [2011] VSCA 42 (24 February 2011) the appeal was not allowed. In this trial, a police officer proffered expert opinion evidence based on the context of utterances relating to figures rather than words. In this case, although the word ‘thingy’ appeared in an extract of a translated transcript quoted in the report, the Prosecution did not allege it to be a code word for drugs.

### 4.5.3 ‘Thingy’ – appeals cases

**Introduction**

To determine how prolific the word ‘thingy’ is across appeals cases, and how unique the word might be to Vietnamese drug-related cases, this researcher conducted a keyword search of ‘thingy’ at the AUSTLII website.

**Results**

The search for ‘thingy’ on the AUSTLII website returned 25 references: three were discounted as irrelevant, being cases outside Australia. The 22 references of relevance (to the word ‘thingy’) are found to be in relation to sex offences (14 – used mainly to refer to parts of anatomy), theft (2), drugs (3) and other (3).

Of the 22 references, only two related to LOTE, specifically Vietnamese; both related to electronic surveillance evidence used to prosecute drug offences. One case was heard in the New South Wales Court of Criminal Appeal in 2010 and the other in the Victorian Supreme Court of Appeal 2011. In both instances ‘thingy’ appeared in translated transcripts of telephone calls or listening device recordings.

The other reference identifying ‘thingy’, associated with a cannabis-related offence, was used in a general sense referring to a football tipping competition and the word was not used in reference to drugs.

The word ‘thingy’ was not noted in any case involving LOTE or Vietnamese.
By displaying the data graphically (Figure 4-25), it is clear that ‘thingy’ is unique to Vietnamese drug-related cases appearing in translated transcripts of intercepted telephone conversations and/or listening device recordings. It also shows that the word associated with Vietnamese drug-related activity was used as an adjective and as a noun. In all other crimes it was only used as a noun and only used in a monolingual (English) setting.

**Summary: ‘Thingy’ – Appeals cases**

It has been established that ‘thingy’ is a term peculiar to Vietnamese drug-related cases where translated transcripts from electronic surveillance have been used as evidence submitted by the Crown to prove guilt beyond reasonable doubt in New South Wales and Victorian courts.

**4.5.4 Summary**

This section discussed appeals relating to the alleged use of code words in drug-related trials. Additional data were collected and analysed relating to use of ‘thingy’ across appeals cases not limited to drug-related activity, as displayed in Figure 4-25.

It was shown that the Courts of Criminal Appeal in both New South Wales and Victoria have heard appeals relating to the scope within which expert witnesses are permitted to proffer expert opinion evidence of the meaning of alleged code words.
used in translated transcripts. It was apparent that expert witnesses must base their opinion on specialised knowledge, training and experience in accordance with s. 79 of the Evidence Act of the relevant jurisdiction. However, it was shown in two appeals cases (relating to the Vietnamese language) that expert witness evidence of English words stated to be consistent with drug terminology, only align with Vietnamese words uttered in intercepted conversations when the translator makes a choice of lexical equivalence that allows the connection between languages to be made. In *Chen v R* [2011] NSWCCA 145 (22 June 2011) it was demonstrated that three different translators can come up with as many as four alternative lexical equivalents for the same utterance in a LOTE.

The main points extracted from the four appeals reports are:

1. In Report 1, it was shown that even if police officers proffering expert opinion evidence are native speakers of the language from which the transcript was translated, they are still required to provide reasoning that supports their interpretations of alleged code words.

2. Inconsistency in rulings was revealed in Report 2, where the NSWCCA accepted a police officer’s reasoning relating to his grammatical interpretation of alleged code words for drugs spoken in Vietnamese, even though the officer did not himself speak or understand the Vietnamese language. This researcher asserts that the police officer’s reasoning was fundamentally and significantly flawed.

3. Report 3 revealed that three accredited interpreters the court engaged to help resolve a dispute in the translated transcript, translated a lexical unit in four different ways, which were all found to be grammatically acceptable within the context of the utterance. Deductive reasoning applied by the court led to a decision that one interpretation was optimally correct, but only within the context of all available evidence presented in the trial and not just based on the content of the translated transcript. All translations of the LOTE word in question were accepted to be accurate.

4. Report 4 revealed that ‘thingy’ appeared in a translated transcript presented at a drug-related trial in New South Wales but was not alleged to be a code word for drugs.
5. Further investigation of the prolific nature of the word ‘thingy’ revealed that, in appeals cases, ‘thingy’ uniquely appears in Vietnamese drug-related appeals where code words have been in dispute, and where its grammatical use appears to be indiscriminately applied.

4.6 Results summary

The information collected across the four tiers of this research—involving methods of observation, questionnaires, interviews and discourse analysis of court transcripts and appeals reports—provided sufficient primary data to answer the research questions. Evidence of deficiencies in translated transcripts was found and causal factors identified, the implications of which are significant to Australia’s security interests at all levels.
Chapter 5: Analysis

5.1 Introduction

From the data collected, it can be deduced that there are widely held misconceptions within the courts that translated transcripts are accurate. It is also a misconception held by law enforcement agencies that direct equivalence in translation is achievable, and that NAATI qualified interpreters and translators have the skills necessary to prepare translated transcripts. Australia’s language capability relied upon to support non-traditional objectives is deficient due to inadequate training and intelligence support provided to NAATI accredited community interpreters and translators relied upon by law enforcement agencies to provide operational support and to prepare translated transcripts. This chapter contains interpretation and discussion of the results contained in Chapter 4 drawing reference to relevant points made in the literature review in Chapter 2. It provides an analytical syntheses of the data collected across the four-tiered strategy to answer the research questions: What evidence points to deficiencies in language capability supporting efforts to combat serious and organised crime? What are the implications for Australia’s national security?

To help answer the research questions, this chapter addresses the four sub-questions:

1. What evidence points to systemic deficiencies in language capability available to combat illicit-drug activity?
2. How do identified deficiencies affect the judicial process?
3. What causal factors contribute to these deficiencies?
4. What impact do any identified deficiencies have on meeting national security objectives in an Australian context?

At a micro level, questions 1 to 3 are answered in Section 5.2; at a macro level, questions 3 and 4 are answered in Section 5.3.
5.2 Translated transcripts: conflicts, constraints and causal factors

5.2.1 Introduction

Translated transcripts used in the three trials observed in this study were used as an aid to help the jury understand what was contained in the recordings admitted as evidence. It has been shown that the Prosecution calls on police officers as expert witnesses to explain the meanings of alleged code words and jargon in translated transcripts associated with a fact in issue. Expert witnesses have explained words, such as ‘gear’ and ‘thingy’ to mean drugs; however, it is argued that these translations are assessed to be sub-optimal translations of Vietnamese lexical units. In light of inadequate compliance and quality control measures used to check the alleged accuracy of translated transcripts used for evidentiary purposes, it is likely that significant errors remain undetected.

Data relating to preparation of translated transcripts for evidentiary purposes were collected through questionnaires and interviews with LET. These data were compared with results from questionnaires completed by, and interviews held with, CTL who perform similar tasks in a military context. CTS also participated in interviews. Data relating to implementing and using translated transcripts were mainly collected from observing trials, interviewing judicial officers, barristers and court interpreters, and analysing court transcripts. All participants made general comments about translated transcripts.

In this section, comparisons are made between the working environments and approaches taken by LET to transcribing LOTE for evidentiary purposes and CTL for strategic and operational purposes. The results of a comparative analysis are expected to help identify differences that may lead to an understanding of why significant systemic errors are prevalent in translated transcripts used for evidentiary purposes. The analysis also examines Australia’s preparedness to combat serious and organised crime with the language capability it relies upon to support law enforcement operations.

In order to answer the research questions, this section investigates and discusses the topic areas of transcript accuracy, skills and training, intelligence support and working environment influences.
5.2.2 Transcript accuracy – not beyond reasonable doubt

Introduction

Evidence of deficiencies in language capability was revealed through evaluating translated transcripts. This was achieved through observation of trials in Tier 1, and discourse analysis of court transcripts at Tier 3 (case studies) and Tier 4 (appeals reports). Tier 2 questionnaires and interviews with judicial officers, barristers and court interpreters revealed the effect errors in translated transcripts have on the judicial process. All participants provided comments about probable causal factors that contribute to errors identified in translated transcripts. Judicial officers and barristers expressed the importance of translated transcripts being accurate before trials begin, yet as one barrister commented ‘nobody really knows whether the transcripts are accurate or not’. The data revealed that quality control of translated transcripts is left to the accused to inform the Defence counsel of potential errors in the translated transcripts used, or intended for use in court. The translated transcripts are admitted as evidence and used as an aid to the jury to understand the evidence, which comprises the sounds recorded in audio files.

Analysis

The results of this research show that LET have difficulty maintaining evidentiary value while endeavouring to convey some degree of sense in translated transcripts to aid the jury. Operating within the constraints imposed by the judicial process, LET prepare translated transcripts without applying context and without specialised training. It was shown in Tier 1 that the translated transcript neither adheres to a purely literal translation, nor conveys sense in ‘natural’ English. LET position the translated text somewhere along the spectrum between literal and free, rendering the translated transcript awkward and containing numerous errors, which results in significant distortions of meaning. The consequences of LET trying to resolve the tension imposed by organisational constraints are evident in the results of this study, particularly in relation to the translated meaning of words and phrases that are alleged to be code words.
Results obtained through observing court trials and analysing court transcripts and appeals reports show that translated transcripts contain frequent and significant errors relating to:

1. translation of terms of address
2. translation of reference words
3. translation of alleged code words and jargon
4. mistranslations of meaning
5. distortions of meaning
6. omissions
7. unjustified additions
8. ambiguity of meaning
9. poor English to the point where the translated transcript simply does not make sense in English.

A key research questions in this study was: How do any identified deficiencies affect the judicial process? The problem areas in translation adversely affect the judicial process and detract from the integrity and reliability of evidence produced in court. This research has shown that errors detected in transcripts cause:

1. delays in trials
2. confusion for the court interpreter
3. confusion for the jury
4. confusion for judicial officers and barristers
5. confusion for the accused
6. detract from the integrity of the judicial process.

There is a high probability that errors in transcripts pass undetected. Participants stated that errors are likely to go undetected unless the accused or family members and/or friends of the accused bring particular words and/or phrases to the attention of the Defence counsel. This is because no measures are in place to have an independent translator assess the translated transcripts unless the Defence commissions the work. As observed in a trial (additional to the case studies), significant errors in the translated transcripts were only detected and identified after the judge had reason to suspect that a high level of ambiguity was associated with
who was saying what to whom. Neither the two court interpreters present nor the two accused or their Defence counsels brought these errors to the attention of the judge. This was significant to the fact in issue that involved allegations of conspiracy to import and traffic a commercial quantity of heroin. The transcript was found to be ambiguous and contained numerous errors. The trial judge said that unless the transcript was checked and amended, he would not allow the translated transcript to be used for evidentiary purposes in the trial. Following out-of-court conferences between the Crown prosecutor and counsel for the Defence, an agreement was struck for one of the accused to answer to the lesser charge of possessing a prohibited drug.

Acceptance by the courts that translated transcripts are accurate accounts of literal meaning is reflective of a wider misconception that exact equivalence between languages is achievable. As Kussmaul highlighted, it is quite often the case where the function of utterances in a source language serves no communicative purpose for the target audience (1995). This was clearly demonstrated in relation to the alleged meaning of ‘thingy’ as proffered in evidence in the three case studies and in additional drug-related trials observed.

The word ‘thingy’ is not a code word for drugs. A County Court judge hearing a drug-related trial expressed frustration at the reappearance of ‘thingy’ in a Vietnamese drug-related trial observed in early 2014. Across the three trials forming the core case studies in this study, ‘thingy’ proved a contentious term alleged by the Prosecution to be a code word for drugs; specifically heroin. In questionnaires and interviews judicial officers, barristers, court interpreters and LET identified ‘thingy’ as a word that seems to have a variety of uses and applications. The word ‘thingy’ frequently appeared in translated transcripts read to the court and its use was discussed at length during the course of trials, particularly during examination and cross-examination of witnesses.

Grammatical use of ‘thingy’ is summarised below and a comparison made between data collected from Case study 1 and Case study 2.
Figure 5-1: Grammatical use of the word ‘thingy’ – Case studies 1 and 2

Note: In the 267 pages of Case study 1, 41 pages contained the word ‘thingy’ and in Case study 2, 32 of 513 pages contained the word.

Figure 5-1 shows that ‘thingy’ more frequently appeared as a verb than a noun in both trials, and was less frequently used as an adjective. In both trials the word was most frequently used in a way that remained undetermined due to its apparent indiscriminate use throughout the transcripts.

The Vietnamese LET who was examined, cross-examined and re-examined during the voir dire in Case study 3, gave evidence that the Vietnamese words ‘ấy’ and ‘cái đó’ are often translated as ‘thingy’ in transcripts because it is not clear to what the speaker is referring. According to a Vietnamese–English dictionary, the word ‘ấy’ means ‘that’ or ‘those’. The word ‘cái đó’ is listed as meaning ‘that’, ‘that thing’; or alternatively ‘fish pot’ (Bui 2000, p. 56). The word ‘ấy’ has complicated applications as demonstrated by Nguyen (1997) in her publication providing examples and language instruction relating to contemporary Vietnamese. For example:

‘ Apóschét!’ – ‘My goodness, oh no!
‘Ây mà...ấy mà!’ – ‘That’s what I mean.
‘Ây thế mà lại, ây thế nhung – and yet, nonetheless.
Tình cờ ây thế mà lại hay! – What a happy accident (Researcher’s translation:
‘What a fortunate twist of fate’) (1997, p. 292)

In all these examples the word ‘ấy’ performs the function of an exophoric reference word literally meaning ‘this’, ‘that’ or ‘it’; it does not mean ‘thingy’.
The word ‘thingy’ as a noun does appear in an English–Vietnamese dictionary listed as a related English word under the word ‘thing-ummy’; however, ‘áy’ is not listed as a Vietnamese word meaning ‘thingy’ (Viện Ngôn Ngữ Học 1993, p. 1780).

In the three trials observed, the word ‘thingy’ was important to the Prosecution submitting evidence that it was used in relation to drugs. Chapter 4 of this thesis revealed how and where ‘thingy’ appeared in translated transcripts presented as evidence during trials. Acceptance by the courts that ‘thingy’ generally means drugs is a significant misconception.

When the trial judge in Case study 2 consulted a Vietnamese court interpreter about ‘thingy’ the interpreter said: “‘thingy’ is a made up word’. Court interpreters encountered significant problems when interpreting between counsel and the witness where quotes from translated transcripts formed part of questioning. Court interpreters said they have difficulty interpreting ‘thingy’ from English to Vietnamese; one court interpreter said it is a ‘made up word’ used by producers of translated transcript.

Lengthy discussion took place in Case study 2 about how the court interpreter might be able to interpret ‘thingy’ back into Vietnamese during counsels’ questioning of a witness. However, it appeared the issue could not be resolved. The complexities of the court interpreter having to reproduce the same lexical equivalents in Vietnamese the LET had used to produce the translated transcript were too great. At the direction of the court, when ‘thingy’ appeared in questions quoting translated transcript the court interpreter made several attempts to listen to the original (Vietnamese) audio recording to identify what lexical units, such as ‘áy’, or ‘cái đó’, had been used for ‘thingy’ and write them down. The interpreter then interpreted counsels’ questions put to the witness in English using those same lexical units. This was cumbersome, time consuming, mentally draining for the interpreter, and confusing for the witness and everyone else in the courtroom. More importantly, it demonstrates that the content of translated transcripts cannot be back-translated through a court interpreter maintaining translation veracity at word level. Therefore, as the trial judge pointed out in Case study 2, the witness is getting an interpretation of an interpretation. Analysis of data collected relating to the word ‘thingy’ shows it has been translated from commonly used Vietnamese reference words, such as ‘áy’
and ‘cái dó’, which are more appropriately translated as English reference words such as ‘it’ and ‘that’.

As stated by a Vietnamese LET giving evidence during a voir dire in Case study 3, when LET are unsure of what is being referred to in intercepted conversation, they use the word ‘thingy’. The causal factors relating to inappropriate use of ‘thingy’ are likely to relate to the compulsion of LET to adhere to strictly literal translations and being discouraged to provide translator’s comments with their translations, as was reported by LET participants.

In addition, it has been revealed that the practice of using ‘thingy’ has become a norm applied by LET of Vietnamese who have created a drug-related genre of language unique to translated transcripts used for evidentiary purposes. It has been reported in this research that ‘thingy’ has appeared in Vietnamese drug-related transcripts dating back to at least 2000. The word has been used in drug-related trials in New South Wales and Victoria, and according to one participant, is now being used by LET when preparing translated transcripts from Chinese language. One Vietnamese interpreter claimed the word first appeared in translated transcripts in South Australia.

This research reveals that ‘thingy’, as it appears in drug-related translated transcripts, crosses jurisdictions and languages (at least Vietnamese and Chinese). It is assessed as probable that ‘thingy’ is peculiar to these two Asian languages due to difficulties of translating reference words from one language to another where there is no direct equivalence within the constraints of producing faithful translations in a format acceptable for evidentiary purposes. However, it is clear that the way the word appears in translated transcripts is far less than an optimal translation of the source text, and is more appropriately described as a distortion of meaning with the likelihood of culminating in distortion of evidence.

Ambiguous and incorrect use of ‘thingy’ in translated transcripts provides the Prosecution with the opportunity to have the word interpreted by an expert witness as a code word for drugs. As have many expert witnesses before him, the expert witness (police officer) who proffered evidence in Case study 1 claimed ‘thingy’ means drugs, and did so based on his opinion which is ‘wholly or substantially’ based on his ‘specialised knowledge’ in accordance with Uniform Evidence Law s. 79(1) (Odgers 2012, p. 352). Odgers says:
Where ‘experience’ is asserted to be the basis of ‘specialised knowledge’, this will need to be clearly demonstrated. Much will depend on the field of expertise of knowledge in question. Thus, a police officer may have sufficient experience to express an opinion that a recorded conversation includes coded language of a sort used by drug dealers (p. 362).

Vietnamese drug dealers do not use ‘thingy’ as coded language for drugs. While it may well be appropriate for police officers in monolingual situations where the recordings are in English and contain code words or jargon that are common parlance used by English-speaking drug dealers. However, it is argued that English-speaking monolingual expert witnesses do not have the ‘specialised knowledge’ required to proffer opinion evidence of alleged drug-related code words translated from LOTE unless they themselves have performed the translation. If, for example, the monolingual expert witness (police officer) had been involved in a series of drug-related operations where ‘thingy’ had been established as common parlance used by Vietnamese drug dealers to refer to drugs, and if there was an unambiguous lexical unit in the Vietnamese language that consistently meant ‘thingy’ within the context it was used, then in accordance with s. 79(1) there may be scope for the expert witness to proffer such evidence as admissible. However, the expert witness would also be required to establish a reasoning process that led to the evidence proffered, as in the case of *Nguyen v R* [2007] NSWCCA 249 (22 August 2007), discussed in Section 5.5.2 of this thesis.

This research shows that ‘thingy’ is a linguistic creation manifested by the constraints imposed upon LET and is the likely consequence of inadequate or non-existent specialised training. The situation is further compounded by the assumed accuracy of transcripts held by law enforcement agencies and the courts in the absence of adequate quality controls. This has led to flawed evidence in the form of alleged code words being interpreted by expert witnesses who rely upon the judgement of the LET who interpreted the utterance into English. To exacerbate the problem, participants in this study reported that unless the Defence has adequate funds with which to have transcripts checked, evaluation of the translated transcript is usually carried out by family or friends of the accused who are unlikely to be accredited professional translators of Vietnamese into English.
Use of ‘thingy’, and how it has been interpreted in court, is likely to have resulted in miscarriages of justice. It is assessed that trials in which the Crown has successfully proffered evidence to the effect that ‘thingy’ means drugs, are likely to have been heard and decisions handed down based on evidence that has been distorted through translation and subsequently interpreted incorrectly by expert witnesses. Use of ‘thingy’ in drug-related translated transcripts has undermined the integrity of the judicial system and has, on the balance of probabilities, resulted in incorrect weighting of evidence presented against the accused in at least some Vietnamese drug-related trials over a period of no less than the previous 10 years. Courts hold the misconception that ‘thingy’, as it appears in translated transcripts, means drugs.

The word ‘thingy’ in drug-related appeals cases appears to be unique to Vietnamese drug-related crime. Analysis of available data at austlii.edu.au reveals that ‘thingy’, is alleged to be a code word for drugs in translated transcripts of telephone intercept and/or listening device recordings, has diverse grammatical uses and appears in New South Wales and Victorian appeals case reports.

Systemic misuse of ‘thingy’ is just one example of distortion in translated transcripts used for evidentiary purposes. While this research used ‘thingy’ as the primary example, it has also revealed that LET have chosen other lexical units in English to empower the Crown’s evidence against the accused.

The word ‘gear’, frequently translated from the Vietnamese word ‘đồ’, is a clear example of sub-optimal translation used in drug-related translated transcripts. The word ‘đồ’ in Vietnamese is commonly translated as ‘stuff’ or ‘things’ in English. The more appropriate Vietnamese term for ‘gear’ is ‘thiết bị’, meaning ‘gear’ or ‘equipment’. When interpreting ‘gear’ in counsels’ questions during trials, court interpreters used ‘đồ’ which would be understood by a non-English speaking witness as ‘stuff’ or ‘things’. The witness is unlikely to be aware of the implications of the word being translated as ‘gear’ in the translated transcripts. This is an example of an error of significance to the element of fairness of the trial remaining undetected in the judicial process. By choosing to use the word ‘đồ’ for gear instead of the more correct word ‘thiết bị’, the court interpreter is compensating for discrepancies in the translated transcripts to facilitate the uninterrupted flow of communication in court and fulfilling the role of a ‘communications facilitator’ as opposed to a ‘conduit’, as
described by Laster and Taylor (1994) and as Davidson found in his research of hospital interpreters (2000). This practice is biased toward the Prosecution and breaches the integrity of the judicial process.

By a LET choosing ‘gear’ instead of ‘stuff’ or ‘things’ in translated transcripts, the way is open for an expert witness to proffer expert opinion evidence that ‘gear’ is common parlance used by drug dealers based on the monolingual witness’ ‘specialised knowledge’, which according to Odgers, must be based on the witness’ training, study or experience (2012, p. 352). It is possible that the police officer has specialised knowledge of code words, such as ‘gear’, drug dealers use when speaking English, but it is argued that if he does not understand the Vietnamese language he cannot profess to have specialised knowledge of the actual Vietnamese words used to produce a translated transcript. Therefore, in this situation, it appears the police officer is giving expert opinion evidence based on a further interpretation of the evidence as reported by another person who has the specialised knowledge, that is, the LET who produced the translated transcript.

Attributing intercepted and recorded utterances to the accused is a fundamental starting point when presenting telephone intercept and listening device recordings as evidence in court. This research shows that gender attribution was a frequently detected error in translated transcripts where the translator either assumed the gender of the speaker, or assigned gender based on assumed context. The Vietnamese words ‘nó’ and ‘minh’, which are non-gender specific personal pronouns, were cited as examples where the Defence challenged the alleged accuracy of translated transcripts resulting in lengthy trial delays until the problem was resolved. The Crown subsequently amended the translated transcripts.

Distortions in meaning and sub-optimal translations are caused by the constraints within which LET are required to produce translated transcripts for evidentiary purposes. It was beyond the scope of this research to provide detailed analysis of all code words and jargon alleged to be references to drugs and other areas of translated transcripts that contain what appear to be consistent and systemic errors. The prolific and inappropriate use of ‘thingy’, and sub-optimal translation of the Vietnamese word ‘đờ’ to mean ‘gear’ instead of ‘stuff’ or ‘things’ can be seen as evidence of a wider problem caused by deficiencies in LET specialised training,
intelligence support, and the constraints associated with presenting evidence based on translated transcripts from LOTE.

Where translated transcripts are used for evidentiary purposes, the accused is arguably at a disadvantage even before the trial begins. In the absence of specialised training, clear methodologies and guidelines, and appropriate quality controls, it is likely a high risk will remain that translated transcripts used in trials involving serious and organised crime will contain unacceptable levels of distortion and sub-optimal translations. Many such deficiencies in translated transcripts may remain undetected due to a misconception that translated transcripts used as evidence are accurate accounts of what was uttered in the source text.

Compounding the problem is the limited resources available to check the translated transcripts for alleged accuracy before being presented for use as evidence. Court interpreters participating in this study reported that it is not the role, nor should it be, of court interpreters to comment on the alleged accuracy of translated transcripts presented by the Prosecution or challenged by the Defence. Nor is it appropriate or fair that non-accredited people in translation and/or interpreting (such as, the non-English speaking accused or his/her family) be relied upon to determine the veracity of the translated transcripts presented by the Prosecution in the absence of credible quality control. It is ironic that it is a legal requirement that the courts provide professional interpreting services for people of non-English speaking backgrounds who have difficulty communicating in English, yet the accused and/or their families (many of whom are unable to read English) are asked to comment on the alleged accuracy of the translated transcripts to be used as evidence against the accused before the trial begins.

NAJIT says translated transcripts should be checked for consistency in terminology, labels, symbols, notes and abbreviations (2009, p. 6). An association of judicial interpreters and translators did not exist in Australia at the time of writing this thesis. Therefore, a position statement in relation to the way translated transcripts are produced has not been published for guidance in an Australian context.

Summary: Transcript accuracy

The idea that translated transcripts are ‘accurate beyond reasonable doubt’ is a misconception held by the court. Assumed by the courts to be accurate at word and/or sentence level, translated transcripts set the scene for further interpretation of
meaning during trials to convince a jury that the accused is guilty beyond reasonable doubt, or to defend such allegations.

In the case of drug-related trials, it has been demonstrated that it is usually an investigating police officer called by the Crown to proffer expert opinion evidence to interpret the meaning of alleged code words and phrases the accused used. It was reflected in the results of case studies and appeals cases analysed in this study that the dynamic range of possible meanings of literally translated utterances available to the monolingual police investigator is extensive, and extracts of transcripts can easily be interpreted in a myriad of ways, particularly in relation to code words and jargon.

LET have chosen words such as ‘gear’ during translation in preference to words such as ‘stuff’ or ‘things’. The word ‘gear’, more so than ‘stuff’, is easily recognised as drug-related parlance used by English speakers. In this case, the translator’s choice of lexicon facilitates an interpretation by the expert witness testifying that the non-English speaking accused used drug-related jargon. A judicial officer commented during an interview that he found it strange to hear drug-related jargon used in translated transcripts in court. The reason for this is clear. The LET has chosen English drug-related jargon to enable the prosecution to proffer evidence that the accused was using common parlance associated with the drug trade.

NAJIT propose a rule for translators to follow in order to maintain ‘independence and neutrality’ as:

Independence and neutrality is the concept that the resulting evidentiary product would remain unchanged were the translator to be hired by the opposing party (2009, p. 4).

Applying this concept to the case studies of this research, it is highly unlikely that a translator working for the Defence would have chosen words such as ‘thingy’ and ‘gear’. It has been shown that the rules of evidence relating to expert witnesses need to be more stringently applied when evidence is proffered relating to the alleged meaning of utterances contained in transcripts having been translated from LOTE.

The courts need to pay closer attention to the way translated transcripts are presented and determined to be accurate, noting that a translated transcript cannot be viewed as a literal word-for-word translation that can be further interpreted appropriately by a monolingual expert witness. During the trial in Case study 1, the Prosecutor, when referring to the transcripts, clearly said “…as they sit now, these
are, beyond reasonable doubt, accurate translations.’ The translations referred to contained frequent and indiscriminate use of ‘thingy’. It is argued that inappropriate use of ‘thingy’ in translations, as discussed in this section, renders the translated transcripts inaccurate beyond reasonable doubt, and reflects inadequate training in transcription.

5.2.3 Skills and training

Introduction

A serious misconception law enforcement agencies and courts generally hold is that LET are appropriately trained and have the skills needed to prepare translated transcripts. As Hale (2011) reported in the results of her study of Australian court interpreters, and as reflected in the results of this study, specialised training for community interpreters and translators working in the legal environment is needed to improve the integrity of the judicial process. While LET reported not receiving any form of specialised training to prepare them for transcription tasks, the Australian government has established a unit of competency called ‘Prepare Translated Transcripts’. This gap in training for LET represents a significant deficiency in language capability upon which law enforcement agencies rely. The reasons for this deficiency and the impact it has on law enforcement agencies and the judicial system are discussed in this section.

Analysis

Transcribing LOTE from recorded conversations obtained through telephone intercept and/or listening devices into transcripts in English for evidentiary purposes is a specialised skill. This was established from interviews held with LET, CTL and CTS participants. CTL receive extensive specialised training in this area, particularly in translating jargon and code words. In a military context, CTS said competency in transcription skills requires up to an additional six months of specialised training and mentoring beyond general language training. In contrast, LET participating in this study reported not having received any transcription training and were not aware of any training available in this field of expertise. The inconsistent way LET negotiate transference of meaning when preparing translated transcripts was demonstrated in data collected during observation of Case study 1 shown in Section 4.2.2 and in the extracts of court transcripts provided in Section 4.4.2 and Section 4.4.3.
The courts and law enforcement agencies hold the misconception that NAATI accreditation held by LET is a reliable measure of their proficiency in transcription skills. Law enforcement agencies rely upon the present national accreditation arrangements for interpreters and translators administered under NAATI as an indication of language proficiency for the purposes of engaging interpreters and translators to prepare translated transcripts. However, national accreditation testing does not currently require the candidate to demonstrate competence in the skills needed to transcribe spoken LOTE into written English for any purpose, let alone evidentiary purposes. LET reported that NAATI accreditation standards, which are generalist in nature (Hale 2012), do not assess transcription skills, and therefore are not reflective of a community interpreter/translator’s competence in this area.

The traditional security sector of the Australian Intelligence Community and the Australian Defence Force do not require their linguists to have NAATI accreditation for transcription purposes, and government intelligence agencies, such as the Australian Security Intelligence Organisation and the Australian Signals Directorate, have moved away from requiring their linguists to hold NAATI accreditation as a prerequisite for employment involving transcription from LOTE. Australian Defence Force CTL are not required to have NAATI accreditation to perform transcription tasks; however, specialised training is provided in this area for CTL. During interviews, CTL and CTS revealed that specialised training is required to effectively transcribe intercepted communications for operational and strategic purposes. They emphasised that interpreting and translation skills, although relevant, are quite different to the skill required to effectively carry out transcription tasks.

A unit of competency relating to transcription skills and preparing translated transcripts has been identified and training is available through the Vocational Educational Training sector. Noting the deficiency participants reported in transcription training and qualifications, this researcher investigated the availability of training outside the military sector relating to preparing translated transcripts. It was found that the Department of Education, Employment and Workplace Relations has developed a unit of competency with the unit designator PSPTIS609A Prepare Translated Transcripts (DEEWR 2012). PSP12 is the Public Sector Training Package listed on the government website (training.gov.au) that includes this unit. The unit of competency comes under the qualifications listed as PSP61010 and PSP61012.
Advanced Diploma of Translating. The website lists nine Australian Registered Training Organisations that have approval to deliver unit PSPTIS609A, currently have it in scope and/or have notified delivery of training. Appendix B contains a list of training organisations that provide information on PSPTIS609A.

Through the course of this research, it was established that only one Registered Training Organisation delivered this unit of competency in 2012. It passed 98 students, recording two fails, and had seven withdrawals; in 2013 it passed 99 students, recorded no failures and had eight withdrawals. Across all Australian states and territories, data provided by the National Centre for Vocational Educational Research (NCVER) revealed that Victoria was the only jurisdiction to have issued Advanced Diploma of Translation qualifications in 2012 passing 98 students. At least 94 students have been recorded as having been issued the qualification in 2013.

Only one training provider delivers training and awards qualification in PSPTIS609A Prepare Translated Transcripts. The NCVER reported that RMIT was the only institution in Australia that had delivered the unit of competency PSPTIS609A Prepare Translated Transcripts in 2012 and 2013 (pers. comm., 27 July 2014, [name withheld], NCVER). Across the two years, the statistics represent an aggregate pass rate for students of 92 per cent (197 students), a failure rate of 0.9 per cent (two students) and a withdrawal rate of 6.5 per cent (15 students). The failure rate is noted as zero per cent for 2013. It is not known what percentage of students, having passed this unit of competency, progressed to achieving NAATI accreditation as professional translators and/or interpreters. However, NAATI provided data relating to professional Vietnamese translator accreditation rates for the years 2011 to 2013. NAATI data relating to translator qualifications are displayed alongside NCVER data in Figure 5-2.
Figure 5-2: Translator qualifications 2011–13

Note: NAATI = National Accreditation Authority for Translators and Interpreters; PSPTIS609A = Prepare Translated Transcripts unit of competency.

The data in Figure 5-2 show the pass/fail rate for Registered Training Organisation qualifications is clearly inversely proportional to the pass/fail rate for NAATI accreditation. The NAATI professional Vietnamese translator accreditation pass rate for the sampled timeframe is around 9.4 per cent compared with an aggregate pass rate of 92 per cent for PSPTIS609A (non-language specific). This shows that few, if any, students who passed PSPTIS609A will have also achieved NAATI accreditation as a professional Vietnamese translator, noting that the figures for PSPTIS609A are not language specific, which further reduces the probability of professional Vietnamese translator accreditation being awarded. This is reflected in the NAATI data: only one person was accredited as a professional Vietnamese translator in 2011, two accreditations were awarded in 2012 and none were awarded in 2013. At 23 September 2014 no NAATI accreditations for professional Vietnamese translator had been awarded for 2014 (pers. comm., 18 September 2014, [name withheld], NAATI).

The unit of competency PSPTIS609A is important to law enforcement agencies, the courts and other government departments. It is the only qualification available to community interpreters and translators who are engaged to perform transcription tasks in this specialised yet seemingly neglected field of expertise. It is, therefore, directly related to the language capability upon which the non-traditional sector of security combating serious and organised crime relies.
The unit of competency PSPTIS609A Prepare Translated Transcripts does not resolve significant issues LET face. In the event that training providers deliver the unit of competency in accordance with the training specification, a dilemma remains for LET in relation to a skill component within the unit of competency listed as ‘analyse coded language for meaning’. As reflected in the interviews with CTL and CTS, translating coded language relies heavily upon the level of intelligence support made available to the translator. This highly complex and specialised area requires specific training and mentoring over a considerable period of time. CTL and CTS estimated training in producing translated transcripts would take up to three months.

When discussing the language capability the US military needs to address issues such as drug trafficking, Porter says language training for 6–18 months may produce students with practical proficiency, but does not produce experienced intelligence analysts. Porter emphasises that training provides a basis from which to apply skills to other security sectors, but time and experience is required to reach a level of competency, citing a Federal Bureau of Investigation drug operation where junior translators did not recognised the significance of drug-related veiled speech heard in intercepted communications (2006, p. 3).

In contrast, the nominal hours for instruction of the entire competency unit PSPTIS609A varies between 20 and 30 hours according to Registered Training Organisations registered to deliver the training. The skill of ‘analyse coded language for meaning’ is one of 34 skills required to achieve competency of the unit, with all 34 skills taught within 30 nominal hours of instruction. It is therefore assessed as unlikely that Registered Training Organisations are in a position to provide adequate training in the skill ‘analyse coded language for meaning’ or to equip students with required knowledge in ‘rules of evidence’, which are requirements of the training specification.

It is logical that law enforcement agencies will, or should, seek to identify the unit of competency PSPTIS609A on academic transcripts of job applicants applying for positions that require the position holder to prepare translated transcripts. However, based on the nominal hours of instruction afforded students in this area and the complexity of skills and knowledge required, it is assessed that qualification in the unit of competency in its current state of delivery falls well short of industry requirements.
At the time of writing this thesis, no licensing, legislative, regulatory or certification requirements applied to the unit of competency PSPTIS609A. The unit descriptor says:

The unit describes the outcomes, skills and knowledge required to translate transcripts of audiovisual recordings from source language into target language accurately and appropriately for context and end use. It requires understanding of the purpose and potential use of the information, a high level of comprehension of spoken language and the context in which it is spoken, the ability to translate into the same register, and the ability to work between speaking and writing. The translator may be required to collaborate with others involved in the process. No licensing, legislative, regulatory or certification requirements apply to this unit at the time of publication (DEEWR 2012, p. 2).

The application of this unit is:

The unit applies to translators who prepare transcripts and translations of the transcripts for various purposes, particularly surveillance and investigation leading to legal proceedings. Those undertaking this work may be required to testify in court regarding the accuracy and fidelity of the translated transcript (DEEWR 2012, p. 2).

It is clear that a comprehensive training needs analysis has resulted in identification of attributes associated with producing translated transcripts for evidentiary purposes, the first version of which was published on 5 May 2009 (DEEWR 2012). It is therefore extraordinary that none of the participants in this study were either aware of or drew reference to the unit. There are notable conflicts between the training objectives listed under the unit of competency PSPTIS609A and the requirements of law enforcement and the courts. The conflicts mainly concern application of context while remaining impartial throughout the translation process.

Under the heading ‘Element 1 Prepare for audiovisual transcription’ is listed the performance criteria, ‘1.3 Review source material to confirm context and identity and address issues arising.’ This is problematic when the translator is required to translate impartially and to produce an accurate translated transcript of the words contained in the source text. A requirement for LET to satisfy this element would require context to be applied to the translation and, as reflected in the results, LET are reluctant to allow context to influence their translations for the ethical reason of remaining impartial, and to maintain the evidentiary value of the transcript.
Under the heading ‘Element 2 Prepare transcripts of source material’ is listed the performance criteria ‘2.1 Attend actively to material to familiarise with speakers and context’. Again, the competency requires the translator to apply context which conflicts with LET reluctance to breach the ethical code of impartiality.

Under the heading ‘Required skills and knowledge’ it is stated that ‘high-order language skills’ are required to ‘analyse coded language for meaning’ followed immediately by ‘reproduce accurate and faithful transcripts of spoken language’ (the terms ‘accurate’ and ‘faithful’ are not defined in the training specification). These two sequentially listed ‘high-order language skills’ are arguably contradictory as ‘coded language’ is expected to be literally translated in transcripts used in court and not the assumed intended meaning. In addition, ‘language skills’ are required to ‘translate transcripts with required accuracy’. How ‘required accuracy’ may be further defined and determined is problematic, especially when the court requires that accuracy be determined at the word level, leaving little or no scope for alternative translations, which may also be considered accurate.

It may be argued that the unit of competency is generic in nature to accommodate the requirements of other working environments where transcription tasks are required, such as sub-titling of foreign films. However, the description provided of the likely working environment as it appears on the website is clearly orientated toward translated transcripts for evidentiary purposes.

Unit of competency PSPTIS609A Prepare Translated Transcripts requires further development but offers a sound basis from which to develop an essential training package for LET. This is the only unit in the inventory of language-related competency units that includes the skill of analysing coded language for meaning and requires knowledge of rules of evidence, but the unit of competency needs to be significantly improved to reflect industry needs. Academic transcripts will show whether a person has been assessed as competent to prepare translated transcripts in accordance with the criteria of PSPTIS609A. However, qualification in this unit is not indicative of a qualification holder’s ability to effectively produce translated transcripts for evidentiary purposes taking into account the current training specification, how it is being delivered and the practical requirements of law enforcement agencies and the courts.
Summary

LET are not equipped with the skills and knowledge needed to produce translated transcripts for evidentiary purposes. LET participants in this study reported not receiving any specialised training relating to preparation of translated transcripts or training that may help them defend their translations as an expert witness in a courtroom. Specialised training for LET to produce translated transcripts for evidentiary purposes is required. Without appropriate training, LET are ill equipped to apply appropriate translation strategies to optimise quality of the resultant target text. The risk of LET developing their own strategies to negotiate constraints of the legal process when producing translated transcripts has, as revealed in this research, resulted in inappropriate application of established norms that have compounded the prejudicial effect of distorted evidence having been brought before the courts.

A unit of competency for preparing translated transcripts has been identified, but is assessed as unlikely to have any positive effect on the quality of translated transcripts appearing before the courts. Further investigation may be needed to determine whether elements within the unit of competency PSPTIS609A Prepare Translated Transcripts require further development, and are being delivered according to the training specification promulgated by the Australian government. Identification of this deficiency in training has wider implications for meeting national security objectives, which will be discussed further in this chapter.

Highlighting the disparity in Australia’s language capability relied upon for national security purposes military linguists receive specialised training for transcription tasks. CTL and CTS stated that intelligence analysis training was an important and integral part of specialised training in producing transcripts from LOTE. LET said they had not received any form of intelligence or analysis training. Although specialised training was identified as a significant factor that differentiates LET from CTL in relation to how they are prepared to produce translated transcripts, the issue of background and intelligence support required to apply context to intercepted communications was also noted to be a significant issue affecting the quality and useability of translations.

Deficiencies in preparing LET with the required skills and knowledge to perform their tasks effectively has implications for all levels of security. The implications of relying upon LET to support law enforcement operations and to
produce translated transcripts for evidentiary purposes without appropriate training are damaging to the interests of individuals, the integrity of the judicial process and efforts to combat serious and organised crime. A unit of competency like PSPTIS609A Prepare Translated Transcripts needs to be developed and implemented to meet the requirements of law enforcement agencies and the courts, and should be identified as a mandatory qualification required of translators engaged to prepare translated transcripts for evidentiary purposes. Specialised training also needs to include analysis training for translators engaged in transcription tasks associated with serious and organised crime.

It is a misconception law enforcement agencies and courts hold that NAATI accredited interpreters and translators have the skills necessary to effectively prepare translated transcripts for evidentiary purposes or to carry out transcription skills for operational purposes. The skills and knowledge described in PSPTIS609A are not assessed as part of the national accreditation examination process for candidates applying for accreditation outside of courses offered through NAATI registered training providers. Neither is PSPTIS609A a prerequisite for professional translation or interpreting accreditation from NAATI. Therefore, it cannot be assumed by any employer or potential employer that NAATI qualified interpreters and translators, or those accredited with an Advanced Diploma in Translating, have the skills and knowledge needed to prepare translated transcripts for evidentiary purposes. Development of specialist accreditation for preparing translated transcripts through the NAATI accreditation system would significantly improve the standardisation of transcription skills upon which law enforcement and government agencies rely.

5.2.4 Intelligence support

Introduction

Australia and the US have recognised the importance of the intelligence-led policing model to national security and crime prevention (Peterson 2005; Ratcliffe 2003). Yet it appears that law enforcement agencies in Australia have been slow to move away from a model that divides the investigative and linguistic function of crime prevention and response. This section analyses the data relating to the nexus between intelligence information and application of contextual information during translation. It compares the importance LET place on intelligence support and the constraints they face with views held by CTL and CTS in a military context. A
deficiency in provision of background information and/or intelligence support to LET is a significant causal factor that contributes to systemic errors appearing in translated transcripts.

**Analysis**

Language capability within law enforcement is adversely affected by inadequate background information and intelligence support. LET reported that provision of background information and intelligence support was generally poor to very poor, and thought their translations would improve with increased access to information and analysis training. CTL and CTS said context is crucial to translation to determine meaning of utterances so the resultant translation can effectively support decision-making in operational environments. CTL and CTS cited intelligence support as being an integral part of the translation process used to clarify the context of intercepted communications, particularly when code words and jargon are used in source text.

Intelligence support and background information helps bring context to the translation process. The importance of applying context to the translation process is fundamental to conveying sense in the target text (Gutt 1998; Hatim & Mason 2013; House 2009; Viaggio 1991). However, in order to remain impartial in accordance with the Australian Institute of Translators and Interpreters code of ethics and to preserve evidentiary value, LET reported having to be careful when considering and applying contextual information during preparation of translated transcripts. LET often suggested in their comments that literalism is synonymous with notions of accuracy for the purposes of producing translated transcripts in a format required by the Crown. As stated in the literature review, Laster and Taylor argue against confusing ‘literalism’ with ‘accuracy’ (1994); however, as was reflected in the court transcripts, the court relies on the translations being accurate at word and sentence level while also helping the jury understand the recorded utterances in LOTE. This latter requirement is contradictory, and the consequences of trying to manage this tension have been demonstrated in the results of this research. It has been widely documented by translation theorists that equivalence in translation is an elusive concept, and that perceived context through extra-linguistic knowledge is required to help make sense of an utterance (Viaggio 1991). Even then, sense making is idiosyncratic to the translator.
Constraints imposed on LET may preclude use of intelligence data when applying context to translations. LET were unsure of the implications of applying intelligence information to translations. Although LET reported that they felt their translations would improve with increased access to background information, participants expressed reservations about having access to all available intelligence data for fear it might influence the translation process. This indicated that LET were well aware of the evidentiary constraints of not allowing extra-linguistic information to affect the evidentiary value of the translated transcript. LET also cited their obligations to remain impartial in accordance with ethical standards of the translation and interpreting profession, as established by the Australian Institute of Translators and Interpreters. Again, this highlights the conflict of having to convey a factual account of what was uttered in the source text, and conveying a translation in the target text that conveys some degree of sense to aid the jury in its deliberations.

Law enforcement agencies reportedly keep the transcription area isolated from the investigation environment. LET reported that law enforcement agencies physically keep the investigative and linguistic areas separate, for fear that background information and intelligence support might influence the choices translators make when preparing translated transcripts for evidentiary purposes. The results of the study revealed that CTL and CTS consider background information and intelligence support extremely important; CTL heavily rely on it to help determine context of intercepted utterances in LOTE, especially where code words and jargon are used. It was revealed that CTL are provided with full access to intelligence data, in contrast to LET who reported they are not.

Denial of intelligence information imposes significant limitations on the translation process. CTL and CTS emphasised that denial of any information that might bring context to intercepted utterances in LOTE is unquestionably a flaw of the translation process that carries with it a high risk of catastrophic consequences in a military environment. It is commonly accepted that law enforcement operations involving serious and organised crime also involve varying levels of risk, including injury, loss of life, damage to important national assets and other consequences that significantly affect national security. LET who participated in this study said they were also required to provide time-sensitive information in support of law enforcement operations, but they expressed no delineation between the tasks of
preparing translated transcripts and providing real-time operational support. This is of significance, noting that information relating to serious and organised crime, which includes the threat of terrorism, is often gleaned through domestic and intelligence surveillance operations (Dahl 2013, p. 183). In the absence of adequate background/intelligence support provided to LET, it is argued there is a real risk of vital information relating to national security either being missed or, if intercepted, not reported in an appropriate format for quick decision making.

The constraints imposed on LET to provide translations without access to all available intelligence data can only result in sub-optimal translations. CTS said the risks associated with providing CTL with all available intelligence information are usually far outweighed by the advantages of accessing actionable information through translations that provide military advantage in operational environments. CTL and CTS noted that strict security vetting is in place to reduce the risk of compromise of sensitive and/or classified information. LET said they felt as trusted as anyone else in the workplace, which is an indication that denial of intelligence information may not be related to law enforcement agencies holding concerns about trust of native speakers of LOTE. Porter raised trust as a potential issue when discussing the security risks of allowing native speakers of LOTE with uncheckable backgrounds access to classified information for military purposes (2006, pp. 10–11). CTL said they felt trusted to produce translated information required in a military context, and had access to all available intelligence information. LET felt they were trusted but do not have access to all available background information/intelligence relating to conversations they monitor and transcribe.

Translating without access to contextual information presents a high risk of misjudgement. Heuer’s description of ‘conceptually driven analysis’ where fragmented pieces of information are made sense of by framing them within mental models predicated upon personal experience and knowledge, is an important factor to consider in relation to the intelligence–translation nexus. Without having access to all available information to determine the context of source text utterances, LET are left with no choice beyond providing a literal translation or applying some degree of sense to the translation based on a mental model created from prior experience and/or knowledge. Heuer clearly states that accurate perception is difficult to achieve in ambiguous situations and usually leads to inaccurate judgment (1999, p. 14). Gutt
further highlighted this by saying translators bring their subjective understanding and personal judgement to the translation process (1998). It is clear that denial of intelligence information to LET increases the risk of significant distortion occurring in translated transcripts, as was shown in Tier 1, Case study 1. The samples of translated transcript from Case study 1 show that the LET struggled to maintain consistency in approach to conveying style and sense. This resulted in a range of significant errors that can only have confused and/or misled the jury in that trial.

LET interviewed in this study reported feeling isolated. Participants said they do not have access to enough background information when providing operational support to law enforcement operations and/or preparing translated transcripts for evidentiary purposes. This study detected numerous errors in extracts from translated transcripts presented as evidence in court, which highlighted the dilemma facing translators who have to produce a ‘faithful’ or ‘accurate’ translation, without the application of context, in order to preserve evidentiary value. It appears that words such as ‘thingy’ and ‘gear’ are strategies LET use to fill the gap in contextual knowledge. This enables the Prosecution to navigate the transcript through the judicial process with systemic biases remaining undetected. In the absence of quality control measures available to the court to detect and inform of discrepancies in translated transcripts, it is understandable that the judicial process has become accustomed to the appearance of words such as ‘thingy’. At Case study 3 in Tier 1, a LET proffered expert opinion during the trial to the effect that the word ‘thingy’ is simply used as a strategy to bridge a deficiency in contextual application. The LET subpoenaed to give evidence at a voir dire during Case study 1 stated on more than one occasion, that when they are not sure of what a person is referring to in an intercepted conversation, they ‘have to use’ the word ‘thingy’. It is likely that this practice has manifested itself as a result of the constraints within which LET are required to prepare translated transcripts. This is compounded by inadequate skills training, deficiencies in information support, the absence of adequate quality control measures and the LET not being fully engaged in the investigation process.

LET said they are left to make judgements on their own terms relating to how they approach the translation process and negotiate the conveyance of meaning. They do this without training or written guidelines to help them produce translated transcripts for evidentiary purposes. LET may be subpoenaed to appear in court as
expert witnesses to explain and justify the choices they made in their translations. LET participants said they had not received training in this area. LET are discouraged from providing translator’s notes with transcripts as they may increase the risk of being challenged by the Defence during the trial. This is a further constraint imposed on LET during preparation of translated transcripts that further limits their ability to bring sense to the translation. This again was in contrast to the importance placed on providing translator’s notes in a military context, as stated by CTS and CTL. It therefore appears that LET are unable to convey sense in a translation unless they are subpoenaed to appear as an expert witness to clarify specific areas of translated transcripts where the Prosecution and Defence dispute the meaning. However, such disputes will usually only relate to a fact in issue and not the entire transcript. The constraints of having to produce a literally accurate translation, being discouraged to add amplifying or clarifying remarks and not being permitted to apply context, leaves the LET with little room to convey sense in the target text. These translation strategies have the potential to result in catastrophic consequences should they be used in the context of an impending threat or in response to a significant criminal incident, such as an act of terrorism.

The implications of inadequate analysis training and intelligence support afforded LET were reflected in the results of this research. An example of a significant distortion in translation of an alleged code word for drugs was noted in Case study 3, and was investigated by this researcher to determine the probable causal factors that led to the error. This example (described below) provides an insight into the complexities associated with translation and how the translator brings personal experience and knowledge to the translation in the absence of intelligence information. The deduction undertaken to analyse this example is complex and was the result of detailed discourse analysis of court transcripts.

The Vietnamese words ‘một cái’ were translated and appeared in the translated transcripts as ‘a piece’ in the trial designated Case study 3. The Defence contested this as a mistranslation claiming it means ‘one of’. In addition to ‘a piece’, the words ‘take care’ incorrectly appeared in the translated transcript as ‘take cake’. The translator admitted the error during the voir dire of the trial designated Case study 3. In this trial the Crown alleged the word ‘cake’ was a code word the accused used to mean heroin. Detailed analysis of court transcripts revealed probable causal factors
contributing to the error. The investigation this researcher undertook revealed that the LET had misheard a Vietnamese word ‘cân thận’ meaning ‘carefully’ mistaking it for the English words ‘cake tin’. This resulted in an allegation by the Prosecution that the accused had secreted heroin in a ‘cake box’. Following significant confusion in the courtroom and considerable time spent by counsels for the Prosecution and the Defence trying to make sense of the situation, the LET admitted, during the voir dire, that he had made a mistake. The cause of the problem was not revealed to the court, rather it was simply accepted that an error had been made in the translated transcript, which was subsequently corrected.

A significant mistranslation of the alleged code word ‘cake’ (appearing in the translated transcript) is assessed to have occurred as a result of a preconceived expectation the LET held. This researcher’s investigation revealed that the LET had brought assumed knowledge, based on a prior experience, to the translation that resulted in the error being made. In a previous drug-related trial, translated transcripts prepared by the same LET reflected that the word ‘cake’ was heard correctly and proved to be a code word for drugs. These types of errors understandably happen as translators bring subjectiveness, background and contextual knowledge in order to understand a text (House 2009). It is noted that perceptions of reality are often based on mindsets derived from expectations (Heuer 1999) and ‘a mismatch between the context envisaged by the speaker and the one actually used by the hearer may result in misunderstanding’ (Sperber & Wilson 1995, p. 16). CTL and CTS state that in order to reduce the risk of error, all available intelligence relating to the context of the target text is essential to producing an accurate translation. This requires application of analysis, which is a professional exercise within itself (Strickland 2005).

Improved intelligence support for LET is required. It is proposed that provision of appropriate specialised training, including analysis training, and increased intelligence support for LET would minimise the risk of translated transcripts containing significant errors due to inappropriate translation technique or mental rut. It would also improve their ability to provide more usable information in support of operations where timeliness is important. Of concern is that these examples of incorrectly translated transcripts are indicative of a much broader systemic problem in the legal environment where the likelihood of errors in translated transcripts used
for evidentiary purposes remain undetected. However, it is understood that a change in the way evidence is produced in drug-related trials would be necessary in order for these proposed changes to be realised.

**Summary: Intelligence and context**

The reportedly poor level of intelligence support available to LET represents a significant deficiency that adversely affects the language capability available to law enforcement. Application of intelligence data and background information is imperative to successful realisation of an optimal translation, especially where code words and jargon are used in source text. The potential ramifications of deficient intelligence support and the inability of LET to apply context in tactical situations or situations where national security interests are at stake are significant to the safety of police and the community, and to the successful outcome of law enforcement operations targeting serious and organised crime. The notion that translated transcripts are accurate at word level and that it is the task of the party proffering the evidence to interpret those translated words, alleged to be code words for drugs, is a flawed concept that this study has shown distorts the evidence and prejudices the integrity of the judicial process. This is especially the case where monolingual police officers are called as expert witnesses to interpret alleged code words and coded phrases from translated transcripts.

The military model of suitably qualified linguists equipped with transcription and analytical skills and with access to intelligence support is one that according to participants has proved effective. In a broadened security environment where terrorism and all aspects of organised and trans-national crime have seen a blurring of traditional boundaries, it is proposed as anachronistic to maintain such a significant disparity between the language capability and associated intelligence support upon which both military and law enforcement agencies rely, noting that ‘actionable intelligence on terrorist threats is most often gathered through domestic and intelligence surveillance operations’ (Dahl 2013, p. 183).

Community translators/interpreters produce translated transcripts without adequate access to background information and/or intelligence data support to help them determine context of the intercepted utterances. This has resulted in evolution of a genre of language peculiar to translated transcripts, particularly in relation to Vietnamese, and the subsequent systemic distortion of meaning conveyed in
translated transcripts used for evidentiary purposes. The implications for policy and decision makers are that actionable intelligence based on information derived from electronic surveillance activity is likely to be imprecise leading the potential for threats to be envisaged, but not necessarily believed (Dahl 2013, p. 184).

Law enforcement agencies need to review their practices and procedures to provide better information/intelligence support to translators/interpreters engaged to perform transcription tasks.

5.2.5 Working environment influences

Introduction

Observations at Tier 1 and participant comments at Tier 2 pointed to evidence of instances where the law enforcement environment might have influenced the translator’s decision-making process during preparation of translated transcripts. During the voir dire at Case study 3, a LET gave evidence that he was compelled to use the word ‘thingy’ when unsure of what was being referred to in recorded conversations. In Tier 2, a court interpreter gave examples of where it was clear translated transcripts contained errors that were not simple mistakes but were deliberate attempts to skew the translation to secure a conviction. The results indicate a degree of workplace influence on the translation process in law enforcement agencies even though LET participating in this research said there is not.

Analysis

LET and CTL reported they do not feel influenced by the working environment to skew their translation to achieve any desirable end-state. However, the results from other sources of data collected during this research indicate a degree of workplace influence relating to the way translated transcripts are produced. Judicial officers revealed in interviews that they found it odd for English drug-related terms to appear in translated transcripts. Court interpreters recounted examples of unquestionable external influences affecting the way translated transcripts are prepared, and empirical data show the indiscriminate use of ‘thingy’ is likely to be the result of indirect workplace influences compelling LET to seek ways of appeasing the constraints imposed by the judicial process. On two occasions during the voir dire in Case study 3, the LET said he ‘had to use’ the word ‘thingy’ when unsure. The evidence points toward working environment influences that have contributed to the seemingly systemic use of the word ‘thingy’ in drug-related trials.
There were striking differences between views held by LET and those held by CTL in relation to feeling part of an integrated team. LET reported that they felt isolated and that it is left up to their own judgement to make sense of the information they are asked to translate, while CTL revealed they are included as an integral part of an operations team that worked cohesively to achieve common goals. The reported isolated working conditions of LET are likely to have contributed to the evolution and proliferation of the word ‘thingy’ across languages (Vietnamese and Chinese) and across jurisdictions (Victoria and New South Wales).

**Summary: Working environment influences**

Isolation of LET from investigative teams in law enforcement and the absence of clear guidance and training is likely to contribute to deficiencies in translated transcripts identified in this research. It is assessed that the working environment differs between that of law enforcement and the military for transcribers of LOTE from electronic surveillance; the intelligence/investigative function and linguistic capability remains segregated in law enforcement agencies in contrast to an integrated structure adopted by the military. A team-based approach is traditionally and practically applied in the CTL working environment in contrast to the relatively isolated working environment of the LET. Although the transcripts produced in each environment are used to achieve different end-states, it is argued that a team-based approach for LET is not only desirable but also imperative to the effective output of optimally based translated transcripts.

5.2.6 **Summary**

The idea that translated transcripts are ‘accurate beyond reasonable doubt’ is a misconception held by the court. The evidence supporting this claim is contained in results from the four tiers of data collection. Alleged code words for drugs, such as ‘thingy’, were analysed and found to be unsubstantiated constructs born out of the constraints imposed on LET, who do not receive specialised training and who reportedly receive poor levels of information support. Reliance upon monolingual police officers as expert witnesses to interpret alleged code words contained in translated transcripts further increases the potential for distortion of meaning. It is clear that police officers’ expert opinion is significantly reliant upon the judgement and lexical choices the LET made during translation.
LET are not equipped with the skills and knowledge needed to produce translated transcripts for evidentiary purposes. This is in contrast to CTL in the military sector who receive specialised training in intelligence analysis and transcription skills. A unit of competency, ‘Prepare Translated Transcripts’, was identified as relevant to LET tasks, but needs further development to address workplace requirements. Based on the results of data collected, Darwish’s (2012) claim that it is often the case that translators are not appropriately trained to perform translations for evidentiary purposes appears to carry a degree of validity. This gap in LET specialised training provides an opportunity to develop a ‘centre of excellence’ where transcription skills for national security purposes can be delivered within the national training framework and national accreditation awarded by NAATI. The current Improvements to NAATI Testing project may have the capacity to consider this option.

Poor levels of intelligence support made available to LET represent a significant deficiency in language capability, which adversely affects the ability of law enforcement agencies to combat serious and organised crime. Denial of information that helps LET determine the context of intercepted utterances, precludes LET from conveying sense in translated transcripts. This constraint imposed on LET to remain faithful to the source text by applying a literal approach to the translation, allows the Prosecution to take advantage of the ambiguity expressed in translated transcripts. Alleged code words in the translated transcript are usually interpreted by police officers, who have detailed knowledge of the investigation.

Isolation of LET from investigative teams in law enforcement agencies negatively affects the quality of translated transcripts. LET reported feeling isolated and working in a vacuum, not feeling part of a team environment. Court interpreters cited examples of translated transcripts clearly revealing that the law enforcement environment had influenced the translation to strengthen the Prosecution’s case.

Indiscriminate use and interpretation of the word ‘thingy’ in drug-related trials demonstrates deficiencies in language skills and training, intelligence support and quality control processes associated with preparing translated transcripts for evidentiary purposes. Applying the rules of evidence, it is clear the legal system struggles with conceptions of accuracy in relation to translated transcripts. This is compounded by poorly trained and supported LET, and inadequate quality control
procedures and resources made available to check translated transcripts for alleged accuracy before presentation in court. The rules of evidence also preclude a common sense approach to interpretation of alleged code words by LET; instead the court relies upon police officers to proffer expert opinion to bridge the gap in context to help the jury understand the alleged meaning of code words and jargon and to meet requirements of maintaining evidentiary value. This latter arrangement is inherently biased toward the Crown’s case. The risks associated with assuming translated transcripts are accurate for either court or research purposes because they are subject to supposed ‘rigorous legal standards’ include:

- the biased weighting of evidence against the accused
- Crown evidence being declared inadmissible
- the emergence and consolidation of inappropriate norms and conventions used in translations, such as use of ‘thingy’ as it is appears in Vietnamese drug-related translated transcripts.

5.3 Language capability and security: the narrow and the broad

5.3.1 Introduction

The sources of data available to this research provided valuable information from which it was possible to identify deficiencies in language capability outside of the military sector. Evaluation of translated transcripts used in drug-related trials demonstrated that significant systemic deficiencies are prevalent in language capability available to address non-conventional threats to Australia’s security. This section discusses the impact deficiencies in language capability have on meeting national security objectives in an Australian context. It begins by discussing critical causal factors at the macro level that have led to the current disconnect between Australia’s language capability, the translation and interpreting industry and national security policy making. Language policy development is discussed to bring context to the present situation.

This thesis argues that Australia’s limited capacity to scope the language dimension required to combat organised crime undermines the realisation of key national security objectives. It is argued that Australia maintains a narrowly focused Cold War construct in relation to language capability and therefore precludes connectivity required between the two key areas responsible for safeguarding
Australia’s security interests—the military and law enforcement. This runs counter to the political rhetoric of Australia’s security establishment, which acknowledges an expansive and multidimensional security agenda that includes the objective of combating serious and organised crime.

Language learning in Australia is valued, at the policy level, primarily in terms of economic advantage. Educationalists have criticised policy makers for narrowly shaping Australia’s language policies to meet economic objectives, arguing that the language policy agenda is too narrow. Missing from this debate is recognition of the relationship between language capability and security.

The ad hoc nature of language policy making has perpetuated nationwide deficiencies in the language resources upon which law enforcement agencies rely to meet national security objectives. The implications for Australia’s national security arising from deficiencies in language capability is backgrounded by inconsistent language policies and a clearly segregated national language capability dividing military and civilian language capability.

5.3.2 Pathways supporting Australia’s language capability

Introduction

Discussion about Australia’s language policies reveals that the translating and interpreting industry was not aligned with the education industry, and therefore is reliant upon generalist accreditation of successful candidates under the NAATI accreditation system. NAATI is an accreditation authority and does not provide language training. LET drawn from the pool of community translators and interpreters are not adequately trained to produce transcripts from telephone interception and/or listening device recordings in support of law enforcement objectives. Transcription is a specialised skill requiring specific training. Participants in this study said NAATI accredited interpreters and translators are not assessed on their ability to perform transcription tasks and that NAATI accreditation is not an appropriate indication of skills held or professional abilities in this area of expertise.

In contrast, the military sector recognises that transcription is a unique skill and provides extensive and specialised training and mentoring in this area. CTL and CTS said intelligence support and training are essential to the task of transcribing LOTE intercepted during electronic surveillance operations and that they are well resourced and supported in this area. LET and CTL are accredited through two distinctly
different pathways that support the sum of Australia’s language capability. These pathways are discussed below to clarify the context of arguments presented in this thesis that the national security agenda is inadequately supported in the non-traditional security sector.

**Analysis**

It is commonly known—and affirmed by participants in this research—that Australian law enforcement agencies primarily rely on NAATI accredited community interpreters and translators to assist with operations and investigations relating to serious and organised crime and other areas of law enforcement. In the traditional area of security, the Australian Defence Force provides language for specific purposes training at the Defence Force School of Languages, which is augmented with additional specialised training, provided in-country and overseas, to train CTL to meet military security objectives (Thomson & de Silva Joyce 2012).

In contrast to language for specific purposes training provided to military personnel, LET are accredited by the NAATI system of accreditation which is generalist; it does not distinguish between specialist areas, such as health or legal, but assesses broad areas of competence in more than 50 languages (Hale 2011, p. 13; Ozolins 2001, p. 262). It is noted that the present structure of accreditation was under review at the time of writing this thesis.

NAATI has struggled financially to maintain and promote a recognisable and credible standard of accreditation across the translation and interpreting profession. Ozolins commented that:

> following thirty years of major language services and over twenty years of an accreditation system, we still do not have a situation of a ‘normal’ development of a professional area or of a clearly established industry where we can ensure not only reasonable standards but also a commitment to the field and its overall development from practitioners and users alike (2001, p. 266).

Shortfalls Ozolins noted include:

- inconsistency in the provision, availability, and training across languages and geographical areas
- poor and declining remuneration
- unevenness in the professionalism of practitioners
• no common pathway into the translation and interpreting profession
• few practitioners with management, research or organisational skills
• inadequate educational structures for training, professional development or research
• no common industry body for agencies, providers, practitioners, regulators, and policy-makers
• no organisation of user groups (p. 266).

Hale describes the pathways to attaining NAATI accreditation as being diverse, with obvious differences across those who hold the same level of accreditation but have obtained it through different means (2011, p. 13). In 2001 Ozolins commented that ‘the national level of policy-making remains crucial’ but predicted that it was likely that further cost cutting and shedding of responsibilities was inevitable (2001, p. 273). These observations were made one year after the Australian Defence Force opened a new state-of-the-art language school in February 2000 at a cost of $5 million to support language capability required of the military sector (Scott 2000).

In 2005 the Board of NAATI commissioned a review of NAATI’s accreditation processes. The review came to the conclusion that NAATI was realising its achievements ‘on the smell of an oily rag’ due to its poor funding arrangements (Cook & Dixon 2005, p. 2). Following the review, NAATI’s financial situation continued to deteriorate as identified in a further review conducted in 2008 when the Board reported to the then Department of Immigration and Citizenship that ‘NAATI faces a deteriorating financial position with the possibility of insolvency within 12 months’ (WalterTurnbull 2008, p. 1). The consultancy firm, WalterTurnbull, found ‘a divergence of views by Members’ representatives on how NAATI should be structured and how it should achieve its objectives’ and ‘there was no strategic plan with underlying business plans’ (2008, p. 1). The WalterTurnbull report also highlighted similar resourcing problems that the Cook review had identified three years earlier:

the company is operating in a minimalist fashion with a number of recognised important operational improvements as detailed in the Cook Report being put on hold or not pursued due to the current rate of losses (2008, p. 23).
In contrast to NAATI’s deteriorating situation, then Minister for Defence, the Hon. Joel Fitzgibbon MP, announced:

As part of the 2009 Defence White Paper, the Government will establish a more robust and sustainable languages other than English (LOTE) capability within the Australian Defence Force at a cost of $20 million across the next four years [and] Defence will broaden the delivery of foreign language training, through the Melbourne based Defence School of Languages and new regionally based training facilities (Fitzgibbon 2009).

This highlights the disparity in language capability development between a well-resourced military sector and an ailing NAATI responsible for accrediting language practitioners in the societal sector relied upon by law enforcement agencies.

Commenting on the standard of community translation and interpreting in Australia, Ozolins noted that ‘Australia is in the ludicrous position of having a national accreditation system without a means of making this system mandatory for practitioners’ (2001, p. 271). This is still the situation in 2014 where it is incumbent upon individual organisations and agencies to develop policies that determine the level of proficiency required of practitioners.

NAATI’s history of inadequate resourcing, together with a lack of strategic direction, as reported in the 2005 Cook review, has adversely affected its ability to effectively implement processes to maintain the integrity of community translation and interpreting standards. This has also had an impact on government agencies, as identified by Flood in Report of the inquiry into Australian intelligence agencies (2004, p. 157). Language proficiency requirements in some areas of government do not require any standard of accreditation as set by NAATI, having recognised the need for language for specific purposes training to support their specific requirements.

In relation to language proficiency required in the traditional security sector, the Australian Signals Directorate clearly states in recruitment advertisements that professional qualifications are not required of the linguists it employs for intelligence purposes (DSD 2012). The Australian Security Intelligence Organisation does not stipulate that applicants for its linguist positions hold NAATI accreditation, rather, it requires applicants ‘to have an in-depth knowledge of the spoken language(s)/
dialect(s) and social/cultural context’ further stating that ‘the ability to read and write the foreign language(s) is also desirable’ (ASIO 2012).

These recruitment policies likely reflect the difficulty in finding LOTE expertise, as noted in the Flood report which said, ‘language proficiency represents another core competency for the Australian Intelligence Community’ and ‘many agencies lack depth in this area, a weakness that reflects generally poor levels of formal foreign language training in Australia’ (Flood 2004, p. 155). It is unclear what Flood meant when he referred to ‘language proficiency’; however, it is assumed he was referring to a proficiency level suitable for intelligence collection and analysis purposes. Various departments within the Australian Intelligence Community require specific language skills that are not assessed in NAATI accreditation tests, such as the skill of transcribing from LOTE audio recordings directly into written English; the same technique used by LET. As most of these government specialised positions require candidates to satisfy high-level security clearance requirements, many linguist positions in the Australian Intelligence Community are likely to attract and be filled by former Defence personnel who had previously held mandatory high-level security clearances, and have received relevant specialised training to perform required tasks, as reflected in the US context (Porter 2006).

In contrast, the Australian Defence Force relies upon the Defence Force School of Languages to produce the language capability it needs. The Defence Force School of Languages has recently reviewed its curriculum to provide language for specific purposes training to support the Australian Defence Force and other government agencies. The school provides language training to both military and civilian personnel in preparation for employment primarily in government and to a lesser degree some non-government organisations. Employment tasks in these organisations relate to tactical, operational and strategic operations in support of both peacekeeping and combat operations.

A LOTE capability and cultural understanding are critical components of Defence capability (Bardoe 2010, p. 25). Bardoe reported that ‘Vietnamese and Russian were introduced during the Cold War’ and that ‘French was introduced in relation to Defence procurements’. Bardoe added that ‘current strategic and regional interests now place an emphasis on Middle Eastern, Pacific and South East Asian language training’ (2010, p. 25). It was further reported that in 2010, 15 languages
were taught at the school including Arabic, Chinese, East Timorese, Fijian, Filipino, French, Indonesian, Javanese, Khmer, Korean, Malay, Persian, Pidgin, Thai and Pashtu (p. 25). This researcher is a graduate of the Defence Force School of Languages having successfully completed both the Vietnamese and French language courses in 1986 and 1989, respectively.

In 2009 the Defence Force School of Languages engaged contractors to conduct a training needs analysis of operational engagement activities relating to LOTE. The methodology used was based on the Defence Training Model (ADF 2006) and data were collected from LOTE users having had operational experience in a diverse range of Australian Defence Force operations. The training needs analysis investigated various areas associated with providing operational support and involved in intelligence gathering activities. It focused on transcription skills training for military linguists for intelligence purposes; however, details of this analysis are not available for discussion in this thesis. A LOTE capability statement for Defence was developed and promulgated in 2010 (pers. com., 15 February 2013, [name withheld] Department of Defence). Continued investment and capability development in transcription skills training for military linguists is in contrast with deficiencies in training for LET identified in this study and is indicative of the dichotomous landscape of Australia’s language capability.

Summary

The two pathways that comprise the sum of Australia’s language capability clearly demonstrate deficiencies in language capability available to law enforcement agencies combating serious and organised crime. NAATI accredited translators and interpreters are not adequately prepared to undertake transcription tasks and do not receive analysis or intelligence training. This has significant implications for Australia’s national security.

Continued development of language capability in the traditional military sector of security and neglect of the language needs of the non-traditional law enforcement sector has been discussed. It is argued that misguided and under-resourced language policies have led to the problem of a language capability based on a Cold War construct. The implications of this are significant to Australia’s national security interests in a broadened security environment facing increased threats from non-state actors.
5.3.3 Implications for Australia’s national security

Introduction

Australia maintains a broadened concept of national security, but a narrow perspective of language capability. This thesis discusses the conceptualisation of national security in a post-9/11 environment where Australia and other nations face increased threats from non-state actors. Traditional perspectives advocating primacy of the military sector dominated the national security agenda until the end of the Cold War and particularly following 9/11. The military sector continues to train its linguists in general language training at the Defence Force School of Languages while law enforcement agencies rely on the language services of NAATI accredited community translators and interpreters to combat serious and organised crime. This dichotomous ‘structure’ defines the sum of Australia’s language capability, and has not seen significant change up until the time of submitting this thesis. As Connery argues, Cold War security constructs and concepts remain in place, adversely affecting a holistic approach to supporting national security objectives, particularly affecting the essential area of law enforcement (2014).

There are grounds for arguing that the capability deficiency is systemic, requiring a systemic policy response entailing general raising of language skill levels through broadening of participation in language learning across all levels of society. Against a background of inconsistent and short-lived language policies, Australian governments have been keen to improve English literacy standards as the fabric of Australian society grows rapidly in terms of a culturally and linguistically diverse demographic. Language policies have emphasised the economic advantages of Australians learning LOTE but, unlike the US, Australia has yet to explicitly link the importance of language capability to national security.

Literature describing the crime–terror nexus revealed that Australia has recognised the increased threat of trans-national and serious and organised crime as a national security issue, as has Australia’s closest and most powerful ally, the US. The security relationship between the two countries sits well within a description of a security complex situation provided by Buzan (1998), where the two states share mutual major security perceptions and concerns that mirror each other, but with one notable departure in security perspective: language capability. The US has ‘securitised’ the language capability the nation needs to protect its national interests
from external and internal threats. Australia has placed emphasis on the traditionalist model of relying upon the military sector to respond to the widened security agenda.

Australia continues to grapple with the implications of a broadened national security agenda within a Cold War construct of military capability. The implications of having a poorly trained and resourced language capability upon which law enforcement relies to combat serious and organised crime and terrorism, arguably elevates the risk of harm to Australian interests from non-conventional threats.

**Analysis**

Discussing asymmetrical warfare and the importance of foreign language capability to the US Defence Force, Porter identifies language capability as a ‘critical tool’ required to counter non-conventional threats hiding within civilian populations. An expanded pool of foreign language capabilities is required for counter-terrorism purposes. Relevant to efforts to combat serious and organised crime and specifically the illicit-drug trade, Porter provides an example of inexperienced translators missing critical information during a Federal Bureau of Investigation drug operation. The translators failed to recognise the meaning behind veiled speech used by suspects in intercepted communications. Extensive and expensive specialised training is needed to produce language experts to address the non-traditional threats that have entered the national security space (Porter 2006, p. 3). Participants in this study emphasised the importance of specialised language training and the research results reveal significant deficiencies in Australia’s language capability that can be attributed to inadequate or non-existent language training.

Recognition of the threat to Australia’s national security interests from non-state actors was highlighted by the increase in electronic surveillance powers afforded Australian intelligence agencies through government proposed data retention laws. Advances in surveillance technology and increased powers to collect data are limited in their effectiveness because Australia lacks the language capability required to effectively translate targeted communications conveyed in LOTE.

Law enforcement agencies frequently engage Australian community interpreters and translators to perform tasks related to national security. They can be called upon at short notice to fill a gap in language capability and as freelancing practitioners they are administratively easy to manage. However, Porter identifies some significant limitations. The issue of trusting native speakers with sensitive
information in support of national security operations and questionable levels of proficiency in both English and LOTE are areas of potential concern, especially if they have uncheckable backgrounds for security purposes. For this reason, Porter proposes that contractors with prior military experience and having held appropriate security clearances are considered valuable assets (2006). The shortfall of suitably qualified translators with appropriate security clearances was identified as a problem for the National Security Agency immediately following 9/11, with the agency having very little capability to cover the languages of Pashto, Dari, Uzbek and Turkmen. Arabic speakers were eventually identified to alleviate this deficiency in capability; however, they were not proficient as translators and it took three months before they received appropriate security clearances (Aid 2009, p. 221). While it is likely that few NAATI accredited ex-military linguists who have held high-level security clearances are available to assist with Australian law enforcement surveillance operations, it may be worth considering maintaining a national register of those who hold relevant skills and experience in this field.

Serious errors of translation are damaging, but the consequences of further distortion of context and meaning of translated texts has proved to have had devastating effects at all levels of security. Further interpretation of translated transcripts during trials, without consulting the LET and having the veracity of translations checked, is likely to result in injustices occurring due to the systemic distortion of meaning contained in, and derived from translated transcripts. However, distortion of meaning in translated transcripts is not peculiar to the law enforcement environment.

Two well-known errors of judgement in military interpreting demonstrate the human cost and political damage that misinterpretation of context and distorted meaning of translated transcripts can have. The first example involved the shooting down of a Korean Airlines Boeing 747 in 1983 by a Soviet SU-15 fighter jet. Then US President Reagan described the incident as a ‘crime against humanity’ and a murderous act. This response from the US Administration was accompanied by release of carefully selected extracts of intercepted Soviet communications relating to the incident. After a review of the intercepted and translated recordings, it was revealed that the Soviets thought they were tracking an American RC-135 reconnaissance aircraft and not a commercial airliner (Aid 2009).
The second example relates to the 2003 US invasion of Iraq based on the belief that Iraq had developed weapons of mass destruction. This misconception was formed from ‘ambiguous’ signals intelligence released by the National Security Agency. Interpretation of translated transcripts of intercepted Iraqi communications was distorted by what the US Administration wanted to believe, resulting in what the military historian Max Hastings described as ‘the greatest intelligence failure in modern times’ (Aid 2009, p. 245). The point made in both of these examples, and the evidence provided in this thesis, is that preparation and use of translated transcripts in a widened security agenda needs to be fully supported and carefully managed, whether in the security sector or in the courts.

NAATI accredited translators and interpreters are not trained in intelligence analysis. They are accredited to carry out community related tasks in environments such as hospitals, courtrooms and tourism and private businesses. The line is crossed when they are engaged to monitor telephone conversations and listening devices to support efforts to combat serious and organised crime. As shown in Chapter 4, LET do not receive intelligence training or support, as do their CTL counterparts who perform similar tasks. The importance of context was discussed as being important to the useability of translated information provided in both the law enforcement and military sectors, yet the evidence provided in this thesis reveals significant deficiencies in language capability in the societal sector.

During the conduct of this research, interviews with CTL and CTS revealed that mistakes often occur in the military sector due to errors of translation and/or interpreting. The details of which are classified and are not the focus of this thesis. However, it is commonly known that US community interpreters and translators provided language support in military operational areas such as Afghanistan performing transcription tasks in support of military operations. The civilian sector of Australia’s language capability, the translation and interpreting industry, is not adequately prepared to support law enforcement operations domestically as demonstrated in this thesis, and therefore is even less prepared to support military or intelligence agency electronic surveillance operations if or when required to do so. The implications of relying upon well trained military linguists and a poorly prepared cadre of community translators and interpreters to meet national security objectives is asynchronous with Australia’s broadened security agenda.
The concerns Cordero-Esquível and Cordero (2011) raised in relation to language capability deficiencies in the wake of 9/11 have not been echoed in the Australian context. The research results provide evidence that LET need specific purposes training to produce better quality translated transcripts that convey sense while preserving evidentiary value. They are currently denied access to sufficient background and intelligence information to help bring context to intercepted utterances. Context was identified in the literature review as a crucial aspect for both intelligence analysis and translation. This is particularly the case when LET are faced with translating veiled speech and code words. The word ‘thingy’ was clearly identified as evidence of LET having introduced a strategy to deal with the ambiguity of finding equivalence between languages when it is argued that the concept of equivalence is elusive. Perpetrators of serious and organised crime, including terrorism, are highly likely to use veiled speech and/or code words to disguise the true meaning of their intentions/actions.

Specialised language and analysis training provided to CTL is required of LET in order to be able to produce optimal translations of coded language. One of the high-order language skills required within the unit of competency PSPTIS609A Prepare Translated Transcripts is the ability to ‘analyse coded language for meaning’ (DEEWR 2012, p. 6). However, only one Australian Registered Training Organisation was recorded as having delivered training in this area in 2012 and 2013. This researcher considers it unlikely that this training has had any significant impact on the ability of the translating and interpreting industry to support law enforcement agencies in transcribing LOTE for operational or evidentiary purposes. Law enforcement agencies rely on NAATI accreditation as an indication of professional ability to perform transcription tasks. NAATI reports that the average pass rate for professional accreditation across all languages is around 10 per cent and in relation to Vietnamese to English translation from 2013 to 2014 the pass rate was zero (pers. comm., 23 September 2014, [name withheld], NAATI). This is indicative of problems concerning level of training and supply of community translators available to help law enforcement agencies combat serious and organised crime, particularly in relation to the illicit-drug trade. Evidence of deficiencies in professional ability in this area was revealed through observing drug-related trials and undertaking discourse analysis of court transcripts. However, translated transcripts containing code words and veiled speech are not confined to Vietnamese drug-related crime,
and deficiencies in language capability in this area can affect the broader sphere of national security.

Summary

Errors in translated transcripts used for operational purposes or presented in court affect security of the individual, society and the state. Perceived or actual law enforcement biases detected in translated transcripts may be either intentional or unintentional. In either situation, the quality of the translated transcript and the argument used to assign meanings to translated utterances will determine the guilt or otherwise of the accused. Errors in translated transcripts may result in a guilty party being found innocent, or find an innocent person guilty of crimes they did not commit. In both situations, poor quality translated transcripts undermine the integrity of the judicial system and increase the risk of harm to society at all levels of security.

In the case of the Operation Pendennis, the findings of this research raise questions about the veracity of the translated transcripts used in that trial even though they were agreed to be accurate by the Prosecution and the Defence. The assumed accuracy of those transcripts cannot be substantiated in the absence of recognised and specialised transcription training and appropriate accreditation qualifications held by the translator. It is known that alleged code words were used in Arabic and that translators were engaged to produce translated transcripts for the court. The translated transcripts were further analysed by a researcher to produce research findings of how terrorists think. The implications of developing security policies based on such information are significant in light of the deficiencies in language capability identified in this study. The implications for Australia’s national security were also highlighted by examples showing the roles interpreters and translators play in monitoring and reporting information derived from electronic surveillance operations relating to national security. The experience of 9/11 has seen the US government acknowledge the importance of language capability to national security realised through the National Security Language Initiative.

5.3.4 Summary

The boundaries of international, state, societal and individual security have become increasingly blurred since 9/11, seeing the threat from non-state actors take centre stage of the national security agenda. In the Australian context, concepts of security underpinning Australia’s security agenda are undermined by misconceptions
of security relating to the language capability relied upon to meet non-traditional security objectives. An existing narrow approach to languages policy is overshadowed by a widened security policy agenda. The fragmented and evidently ineffective structure of Australia’s language capability relied upon to support law enforcement agencies is being maintained in the absence of essential policy development in this area. This is contradictory to Australia’s policies that seek to keep Australia safe from the harm caused by serious and organised crime, including the increasing threat of home-grown terrorism. An example of how errors in translated transcripts can adversely affect the wider security sector was provided in relation to the interpretation of translated documents used for evidentiary purposes in a terrorist-related trial associated with Operation Pendennis.

5.4 Analysis summary

Analysis of the data reveals the language capability upon which law enforcement relies to combat serious and organised crime is deficient in areas of training, accreditation and accountability. The data obtained through observations of trials, interviews and close scrutiny of court transcripts reveal significant and unjustified systemic biases deeply embedded in the production of translated transcripts for use as evidence to prosecute serious and organised crime. Words such as ‘thingy’ provide sufficient ambiguity in the English translation for the Prosecution to make what it wishes of the alleged meaning. The implications for the individual seeking a fair trial are significant, as they are for the Prosecution that also relies on the purported accuracy of translated transcripts to ensure the interests of the Australian community. The onus placed upon the non-English speaking accused and/or family members and friends to check the translated transcripts presented by the Prosecution for accuracy is questionable. It can also be seen as unjust due to a lack of resources available to engage professionally accredited translators for checking purposes.

The cost to the community of the systemic deficiencies in language capability identified in this study is significant. Delays and confusion in trials resulting from poorly translated transcripts comes at significant financial cost to society. In addition, the potential for evidence to be presented in criminal trials, which is of questionable credibility, strikes at the heart of the judicial system and Australia’s democratic values. These deficiencies are clearly linked to poor language training and
accreditation arrangements (outside the military sector) which have become part of Australia’s linguistic landscape as a result of inconsistent and failed language policies over at least the past four decades.

Community interpreters and translators engaged by law enforcement agencies are not provided with adequate background information and/or intelligence support in order to help them bring context to the conversations being transcribed. This clearly results in nonsensical translations that carry a high level of ambiguity, but are usually declared ‘accurate’ before trials begin. This has been allowed to occur in the absence of the Defence having access to funds and/or the motivation to have the transcripts properly checked. Moreover, it has resulted in evolution of a genre of language peculiar to translated transcripts used as evidence in court, evidenced by inappropriate use of ‘thingy’ and other misused and mistranslated terms identified in this study.

Community translators and interpreters do not receive, or have the opportunity to receive, appropriate specialised training and associated accreditation that enables them to transcribe spoken LOTE into written English for evidentiary purposes. This task has been identified in this study as a specialised skill requirement, which is not currently part of accreditation testing conducted by NAATI. Therefore, translators and interpreters engaged to produce translated transcripts for law enforcement purposes are left to rely upon the advice of peers who have evidently negotiated a way through the legal framework to produce transcripts which are accepted as accurate before trials begin. The judicial system has also adopted a way of viewing translated transcripts as ‘accurate’ translations where monolingual expert witnesses, usually police officers, frequently interpret meaning. It is not surprising that significant errors of translation have remained undetected and have not been investigated to this degree of scrutiny, as any study of this type requires an impartial researcher who is proficient in both English and a LOTE, and who understands the machinations of law enforcement, the judicial processes and the military application of language in a cryptologic environment.

This research revealed deficiencies in language capability provided by community interpreters and translators engaged by law enforcement agencies to translate intercepted utterances for operational and evidentiary purposes. The evidence was technical and detailed, rigorous and reliable. It provided a unique
evaluation of language capability through collecting and analysing open-source information available through open courts and publicly available court transcripts. These sources of information were suitable for the purposes of meeting the objectives established for this research. The findings of this research reveal that translated transcripts presented in court are tailored to fit the requirements of the judicial system and that there is reasonable doubt concerning the alleged accuracy of translated transcripts. Caution should be taken when using translated transcripts as primary data to support research, policy-making decisions or for purposes other than that for which they were intended (that is, as an aid for a jury in a criminal trial).

Investigating this specialised area of language capability would have been extremely difficult, if not for access to the open court system and availability of court transcripts for public viewing. Analysis of data collected from these sources, together with the qualitative data from key stakeholders, has provided findings from which to address a gap in the development of language capability Australia needs for national security purposes.
Chapter 6: Conclusion

6.1 Introduction

Australia’s language capability has not been explicitly recognised in its security policies as an important resource to national security. This thesis argues that the language capability Australia needs for national security purposes deserves a place on the national security agenda. Investigating the relationship between the structures that support Australia’s broadened approach to national security, this research has shown that ‘stove-piped’ language services and associated structures are undermining the language capability required to meet Australia’s national security objectives. This is particularly prevalent within law enforcement where deficiencies identified in this thesis are adversely affecting the integrity of Australia’s law enforcement capabilities and the judicial system. The important role the translation and interpreting industry plays in supporting law enforcement agencies, and the military if required, needs to be recognised and adequately resourced through a holistic approach to language capability development to keep Australians safe.

The stated aim of this thesis was to determine what evidence points to deficiencies in language capability supporting efforts to combat serious and organised crime, and to determine the implications for Australia’s national security. To achieve this aim, the research answered the following questions:

1. What evidence points to systemic deficiencies in language capability available to combat illicit-drug activity?

2. How do identified deficiencies affect the judicial process?

3. What causal factors contribute to these deficiencies?

4. What impact do any identified deficiencies have on meeting national security objectives in an Australian context?

The answers to the questions are summarised in this chapter. This study concludes that there are significant systemic deficiencies in language capability upon which law enforcement agencies rely to combat serious and organised crime which have undermined the integrity of Australia’s judicial system and have implications for meeting Australia’s national security objectives.
6.2 Deficiencies in translation

This research provides evidence of deficiencies in translated transcripts used for evidentiary purposes in drug-related trials. There is a widely held misconception that translators and interpreters are simply conduits that can achieve equivalence at any level of discourse to uphold notions of accuracy while also conveying sense. Transcription of LOTE from telephone interception and listening devices (live or recorded) is a sophisticated skill requiring specialised training and accreditation.

To determine gaps in capability, this research compared the approach taken by law enforcement of engaging community LET for transcription tasks with that taken by CTL. This research revealed that CTL who monitor and transcribe LOTE from electronic surveillance intercept for traditional security purposes approach the task differently to LET when monitoring and transcribing conversations in LOTE for operational and evidentiary purposes.

CTL, supported by intelligence data, apply context to make sense of the source text so translated material is optimally useable for operational and strategic purposes. LET are required to produce translated transcripts without intelligence support and the courts consider their translations accurate at word level, indicative of the conduit model applied to the role of court interpreters (Laster & Taylor 1995). This latter perspective theoretically and demonstrably defies any likelihood of the translation adequately conveying sense without high risk of ambiguity and/or distortion of intended meaning. Rather, it is apparent that the judicial system more readily accommodates a process where expert witnesses are called to interpret the meaning of translated utterances of relevance to a fact in issue. This systemically imposed constraint has resulted in distortion of lexical veracity within the context of the utterance and loss of meaning throughout the translation process, particularly relating to resultant allegations of code words the accused used. Examples provided in this research of distortion in translation included alleged use of ‘thingy’ in Vietnamese drug-related trials. Although this research also revealed deficiencies in other areas of translated transcripts, the frequent misuse of ‘thingy’ in translated transcripts across drug-related trials, across jurisdictions, and across languages (Vietnamese and Chinese) is evidence of a significant deficiency in preparation and implementation of translated transcripts for court purposes.
6.3 Effect on judicial processes

It was found that systemic and sporadic errors in translated transcripts potentially undermine the integrity of the judicial system. Specialised training and improved intelligence support were identified as areas in need of significant development to improve the quality and reliability of translation provided by LET. Such training should not only include ‘knowledge of rules of evidence’, and transcription practices but also, a sound knowledge of linguistic modelling in order to define and categorise translation choices to support arguments of equivalence and accuracy. In addition, law enforcement agencies and the courts need to adopt more rigorous quality control protocols in order to determine the quality of translated transcripts submitted as evidence to avoid potential miscarriages of justice. Applying the rules of evidence relating to opinion evidence proffered by expert witnesses about the meaning of translated transcripts, particularly interpretation of alleged code words, was discussed. Significant inconsistencies in translated transcripts were identified through discourse analysis of court transcripts and appeal reports.

Misconceptions key stakeholders hold significantly contribute to perpetuation of errors contained in translated transcripts. Identified misconceptions were:

- LET are suitably skilled and trained to produce translated transcripts in support of law enforcement efforts to combat serious and organised crime.
- Translated transcripts used for evidentiary purposes are ‘accurate beyond reasonable doubt’.
- ‘Thingy’ as it appears in drug-related transcripts is a word that generally, or specifically, means drugs.
- Court interpreters are a ‘conduit’ and can reinterpret extracts from translated transcripts for a non-English speaking witness without loss of meaning.
- Monolingual expert witnesses have the experience, knowledge and training necessary to interpret alleged coded language appearing in drug-related transcripts translated from LOTE.

This research has shown that many significant errors in translated transcripts are likely to remain undetected. It was demonstrated that judicial processes are influenced by the methods LET use and the style of language used in translated transcripts, particularly in relation to translation of alleged code words. These errors
have a corollary effect adversely affecting the integrity of the judicial system and directly affecting all levels of security: individual, societal and state.

6.4 Causal factors

Causal factors leading to systemic deficiencies in language capability identified in this study are due to a notable gap in policy development at the macro level and dated constructs supporting the pathways that provide for the sum of Australia’s language capability. In addition, systemic language deficiencies identified in the legal system are exacerbated by the constraints within which LET are required to produce translated transcripts for evidentiary purposes.

By comparing LET approaches to transcription with those of CTL, causal factors were identified relating to skills and training, intelligence support and the working environment. Deficiencies in specialised training and improved intelligence support for LET were identified as significant causal factors leading to errors in translated transcripts. In addition, inadequate quality control of translated transcripts used for evidentiary purposes was identified as another contributing factor. LET reported not feeling like part of a team when producing translated transcripts. Military sector participants did not share this feeling of isolation; they reported forming an integral part of the intelligence/investigative process.

Deficiencies in Australia’s language capability need to be addressed through a whole-of-government approach to address these causal factors. This thesis argues that the sum of Australia’s language capacity should be resourced and coordinated through a national security languages policy to ensure the capability upon which both the traditional and non-traditional security sectors rely can respond appropriately to meeting Australia’s national security objectives.

6.5 Impact on national security

Errors detected in translated transcripts are indicative of a much wider problem concerning Australia’s language capability. Not only do deficiencies in language capability affect the ability of law enforcement agencies to prevent and respond to serious and organised crime, the problem of language capability deficiency has a flow-on effect in other important areas of national security, such as intelligence capability. Translated transcripts used for evidentiary purposes have been analysed to support research findings relating to terrorism, representing a clear example of how
the quality of translated transcripts used for evidentiary purposes can affect national security policy making.

Systemic errors identified in translated transcripts due to inadequate specialised training for LET has wide implications for Australia’s national security. The same community interpreters and translators relied upon to produce translated transcripts also provide operational support to law enforcement and intelligence agencies as freelancing contractors. They monitor and translate conversations intercepted in telephone calls and listening devices for a range of crimes other than illicit-drug activity. Terrorism-related activity is another area where people planning an attack on Australian interests may use code words. It is imperative that LET are appropriately trained to quickly analyse and report information in a format that makes sense to operational commanders in situations where timeliness is a critical element to ensuring the safety of life and to supporting national security interests. The relatively less urgent but no less important process of preparing transcripts for evidentiary purposes is indicative of a deficiency in language capability that is relied upon to meet more pressing operational requirements. It is argued that inadequate specialised training and intelligence support afforded LET poses an unacceptable risk to Australia’s national interests. Following 9/11, the Bush administration acknowledged that building the US language capacity was the most urgent need to meet that nation’s future national security requirements.

In relation to the Australia–US alliance, it is argued that Australia has been remiss in not developing the language capability required to meet national security objectives. As a result, it is anticipated that Australia will face increased challenges in meeting its stated commitments to ‘cooperating [with the US] on strategic issues of common interest, including regional security priorities’ and ‘deepening our Defence, intelligence and security engagement with the United States’ (Commonwealth of Australia 2013, p. 35).

Australia needs an effective language capability in order to be able to keep Australians safe. Australian government concerns about its citizens joining rebel forces in the Middle East, and the impact this may have on Australian society upon their return, is a timely reminder that information obtained from electronic surveillance operations to monitor dissident groups and/or individuals is only as good as the translator who communicates the collected information in a usable format to
support the national security effort. The importance of language capability to national security was not mentioned in either the 2008 National Security Statement or the 2013 National Security Strategy.

A holistic approach is required to develop the language capability Australia needs to address national security concerns. Successive Australian governments have recognised that a broadened national security agenda is required to protect Australia’s interests and the democratic values fought for and enjoyed by Australia’s culturally and linguistically diverse society. A culturally diverse society brings with it diversity in LOTE spoken by both law abiding citizens and those with criminal intent. Transnational crime presents the most significant threat to Australia’s national security interests in relation to a range of crimes, including illicit-drug trafficking and terrorism. The nexus between illicit drugs and terrorism has been established (see Chapter 2), demonstrating the importance of transcending traditional organisational boundaries between federal agencies and police at the forefront of combating serious and organised crime. This is especially relevant to sharing information and providing intelligence support.

Australia’s language capability supporting law enforcement has floundered in a broadened post 9/11 security agenda, lost in the shadow of Australia’s national security policy rhetoric. Although Australia followed the UK and the US in promulgating a National Security Statement (2008) and a National Security Strategy (2013), a national languages policy that specifically addresses the language capacity Australia needs to address national security objectives has not been realised. Rather, the traditional military sector continues to train government and military personnel in languages to meet traditional security objectives, while the non-traditional security sector of law enforcement continues to rely upon inadequately trained community interpreters and translators to provide operational and evidentiary support.

6.6 An Australian national security languages policy

A holistic approach to national language capability development is needed to meet Australia’s National Security Functions of ‘Threat detection, recognition, identification and monitoring’, ‘Intelligence information and knowledge sharing and dissemination’, and ‘Incident response, law enforcement, investigation and forensics’ as detailed in the Guide to Australia’s National Security Capability (Commonwealth of Australia 2013, pp. 11–13). Australia needs a national security languages policy to
ensure law enforcement agencies, intelligence agencies and the Australian Defence Force have access to the cohesive and effective language capability needed to meet Australia’s national security objectives. Deficiencies in language capability identified in this study that adversely affect law enforcement agencies and the integrity of the judicial system can be collectively attributed to deficiencies in policy making. An overarching languages policy linked to national security is required to realise the development and maintenance of a national language capability to meet national security objectives.

The situation of a poorly trained and unprepared cadre of interpreters and translators upon which law enforcement relies to support efforts to combat serious and organised crime has obvious implications for Australia’s national security. However, in the absence of overarching policies articulating the importance of language capability to national security objectives in both the traditional and non-traditional security sectors, it is unlikely that the deficiencies noted in this study will be sufficiently addressed. Australia needs a national security languages policy.
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Appendixes

Appendix A: Appearance of the word ‘thingy’ – Case study 1  276
Appendix B: Training providers, PSPTIS609A Prepare translated transcripts  278
Appendix C: Tier 2 participants and data collection cross-reference  279
Appendix D: Tier 2 data collection plan cross-reference – Group 1  280
Appendix E: Tier 2 data collection plan cross-reference – Group 2  282
Appendix F: 1.1.1 Questionnaire – Court interpreter  284
Appendix G: 1.1.2 Questionnaire – Barrister  286
Appendix H: 1.1.4 Questionnaire – Law enforcement interpreter/translator  288
Appendix I: 2.1.1 Questionnaire – Cryptologic linguist  290
Appendix J: 1.2.1 Semi-structured interview schedule – Court interpreter  293
Appendix K: 1.2.2 Semi-structured interview schedule – Barrister  297
Appendix L: 1.2.4 Semi-structured interview schedule – Law enforcement interpreter/translator  301
Appendix M: 1.2.5 Semi-structured interview schedule – Judicial officer  307
Appendix N: 2.1.1 Semi-structured interview schedule – Cryptologic linguist  310
Appendix O: 2.1.2 Semi-structured interview schedule – Supervisor cryptologic linguist  316
Appendix A: Appearance of the word ‘thingy’ – Case study 1

The word ‘thingy’ as it appeared in the court transcript from Case study 1 was used in the following contexts (note that the extracts in quotation marks are utterances directly quoted from translated transcripts of Vietnamese conversations where the accused was alleged to be a participant in the recorded conversations):

1. Page 63 line 2: Expert evidence was given stating that ‘thingy’ was a word substituted by the accused for an ounce of heroin.
2. Page 74 line 13: ‘We will go to buy thingy.’
3. Page 74 line 26: ‘I’m at home right now and if you are thingy by then, just stop by.’
4. Page 75 line 26: ‘It should be quick, will not thingy.’
5. Page 76 line 22: ‘Stay home. Come to pick up. If this is anything, I will phone, thingy, come pick me up.’
6. Page 77 line 11: ‘Thingy, when I’m ready, thingy I will call you, bro.’
7. Page 80 line 28: ‘He said that he had good thingy.’
8. Page 81 line 10: Expert evidence was given stating that ‘good thingy’ means good quality heroin.
10. Page 82 line 30: ‘I only two thingy, handed to him.’
11. Page 82 line 31: ‘Once he thingy, he only handed the money back to me, and why talk to me ridiculous?’
12. Page 84 line 2: Expert evidence was given stating that ‘Two thingy’ refers to two ounces of heroin.
13. Page 84 line 16: ‘Have the thingy for him or not.’
14. Page 84 line 18: ‘Ah, when he thingy, um.’
15. Page 84 line 19: ‘Whenever he thingy, give me a call.’
16. Page 84 line 20: ‘No, now, now he will come thingy.’
17. Page 84 line 27: Expert evidence was given stating that ‘thingy’ is used in relation to a quantity of heroin.
18. Page 85 line 29: ‘I said that I already sold it, already thingy, and he, ah, he, ah.’
19. Page 85 line 30: ‘Already thingy, what? Did you tell me that it was thingy?’
20. Page 86 line 4: ‘Because he came that day and he thingy like that.’
21. Page 90 line 29: ‘I will stop by at your house later and we will thingy.’
22. Page 217 line 12: ‘Ah, the thing is, because the person promised until that, right now we thingy.’
23. Page 232 line 4: The Prosecution examines the witness (accused) and puts to the accused that ‘thingy’ means drugs.
24. Page 233 line 7: The Prosecution examines the witness questioning the meaning of ‘thingy’ as allegedly used by the accused.

25. Page 233 line 12: His Honour questions the interpreter asking if there is a Vietnamese word, ‘thingy’, to which the interpreter replies ‘no’ (line 17).

26. Page 233 line 20: His Honour discusses use of ‘thingy’ in the transcript with the prosecutor.

27. Page 234 line 1: His Honour asks if the interpreter heard ‘thingy’ in the audio recording of the call played to the court.

28. Page 234 line 10: Interpreter admits saying ‘thingy’ in English while interpreting into Vietnamese.

29. Page 234 line 13: His Honour retires the jury explaining to them that the Prosecution say that ‘thingy’ means drugs, but there is an issue with the word in the way it is being used in conversation which needs to be resolved in the jury’s absence.

30. Page 273 line 29: Prosecution quotes translated transcript – ‘Ah, the thing is because the person promised until that, right now we thingy, the person said because the person was stuck with money, sis, try to (inaudible) I ran a lot.’

The word ‘thingy’ performs a variety of grammatical functions in the translated utterances, which makes it difficult to describe the meaning it aims to convey in the English translation.
Appendix B: Training providers, PSPTIS609A Prepare translated transcripts

The following organisations provide online information about unit PSPTIS609A:

- **RMIT** included the unit of competency in a course designated program code C6133, course code LANG5778c delivered during terms 1 and 2 of 2012, 2013 and to be delivered for the first terms in 2014 and 2015 with nominal hours of instruction listed as 30. The unit is clustered with other competency units (rmit.edu.au, viewed 25 May 2014).

- **The Sydney Institute of Interpreting and Translating** lists unit PSPTIS609A as a compulsory elective in its Advanced Diploma of Translation course – PSP61012 comprising of 20 hours nominal instruction. The unit is listed as a compulsory elective. Chinese-English (both directions) and English–Hindi (single direction).

- **The Australian Institute of Translation and Interpretation Pty Ltd** lists unit PSPTIS609A as part of the Advanced Diploma of Translation designated ADT11 at an individual unit cost of $433.40 (aiti.edu.au, viewed 25 May 2014). No allocation of instruction hours was found on the website.

- **The Queensland Department of Education, Training and Employment** promulgates unit PSPTIS609A as part of the PSP12 v1.0 Public Sector Training Package dated March 2013 on its website (training.qld.gov.au viewed 25 May 2014) with a nominal allocation of 30 training hours.

- **TAFE South Australia** includes the unit PSPTIS609A as a compulsory unit as part of the Advanced Diploma of Translation course PSP61012 – TAFE SA code: TP00478, subject code AAALL (offering one preference in 2014: Chinese code 130). 30 nominal hours of instruction have been allocated to this unit (tafesa.edu.au, viewed 25 May 2014).

- **TAFE New South Wales** includes the unit PSPTIS609A as an elective unit as part of the Advanced Diploma of Translation course PSP61010 – TAFE NSW course code: 18943 v1.0 with a nominal 30 hours of instruction (tafensw.edu.au, viewed 25 May 2014).

- **The Multilink Academy of Interpreting and Translation** offers an Advanced Diploma of Translation course – PSP61012 (CRICOS code 079883G) without listing PSPTIS609A as either a core or elective unit (mait.edu.au, viewed 25 May 2014).

Of note, not all training providers include, or make compulsory, unit PSPTIS609A as part of the Advanced Diploma of Translation course they purport to offer.
Appendix C: Tier 2 participants and data collection cross-reference

Group 1

1. What evidence points to deficiencies in language capability available to meet non-traditional security requirements?

1.1 Questionnaire
   1.1.1 (Judicial Officer – N/A)
   1.1.2 Barrister
   1.1.3 Court interpreter
   1.1.4 Law enforcement interpreter

1.2 Semi-structured interview
   1.2.1 Judicial officer
   1.2.2 Barrister
   1.2.3 Court interpreter
   1.2.4 Law enforcement interpreter

Group 2

2. How are the principles of a cryptologic language capability applied to in a traditional security environment?

2.1 Questionnaire
   2.1.1 Military cryptologic linguists
   2.1.2 Military cryptologic supervisors

2.2 Semi-structured interview
   2.2.1 Military cryptologic linguists
   2.2.2 Military cryptologic supervisors
Appendix D: Tier 2 data collection plan cross-reference – Group 1

**Objective:** To determine what evidence points to deficiencies in language capability available to meet non-traditional security requirements.

Table D1: Supporting objectives/data collection cross-referencing*

<table>
<thead>
<tr>
<th>Supporting objectives</th>
<th>Question</th>
<th>Probing questions</th>
<th>Thesis</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1A Experience</strong></td>
<td>1.1.1.1</td>
<td>1.2.1.1a-b</td>
<td>1.2.1.1</td>
</tr>
<tr>
<td>To determine the experience and</td>
<td>1.1.2.1</td>
<td>1.2.1.1a-d</td>
<td>1.2.1.1</td>
</tr>
<tr>
<td>operating environment of interviewed</td>
<td>1.1.1.10</td>
<td>1.2.3.1a-d</td>
<td>1.2.1.1</td>
</tr>
<tr>
<td>court interpreters, barristers, law</td>
<td>1.1.2.10</td>
<td>1.2.4.1a-e</td>
<td>1.2.1.1</td>
</tr>
<tr>
<td>enforcement officials, and law</td>
<td>1.1.3.1</td>
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<tr>
<td>enforcement translators/interpreters in</td>
<td>1.1.3.6</td>
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<tr>
<td>relation to transcripts from electronic</td>
<td>1.1.3.8</td>
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<td>surveillance.</td>
<td>1.1.4.1</td>
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<td>1.1.4.10</td>
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<td></td>
<td>1.2.4.1</td>
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<tr>
<td><strong>1B Skills and training</strong></td>
<td>1.1.1.8</td>
<td>1.2.3.2a-i</td>
<td>1.2.1.1</td>
</tr>
<tr>
<td>To identify any skills gap that may</td>
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<td>1.2.1.1</td>
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<tr>
<td>exist between the skills held by</td>
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<td>community interpreters and those</td>
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<td>1.2.4.5b</td>
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<tr>
<td>required to produce transcripts from</td>
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<td>electronic surveillance and how any</td>
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<td>skills gap may be overcome.</td>
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<td>1.2.4.2</td>
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<tr>
<td><strong>1C Translation style and accuracy</strong></td>
<td>1.1.1.4</td>
<td>1.2.1.2e</td>
<td>1.2.1.1</td>
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<tr>
<td>To identify problematic areas of</td>
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<td>1.2.1.2h-k</td>
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</tr>
<tr>
<td>transcripts, the frequency of</td>
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<td>1.2.1.2q</td>
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<tr>
<td>occurrence, and potential causal factors.</td>
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<td>1.2.1.3c-d</td>
<td>1.2.1.1</td>
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<td>1.2.2.2b</td>
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<td>1.1.2.10</td>
<td>1.2.2.2g-h</td>
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<td>1.2.3.3d-g</td>
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<td>1.2.4.3b-f</td>
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<td>1.2.1.3c-d</td>
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<td>1.2.2.2c-e</td>
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<td>1.2.1.1</td>
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<td>1.2.2.2i-m</td>
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<td><strong>1D Translation style and accuracy</strong></td>
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<td>1.1.1.6</td>
<td>1.2.1.2n-p</td>
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<td>transcripts have on judicial processes</td>
<td>1.1.1.7</td>
<td>1.2.1.2r</td>
<td>1.2.1.1</td>
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<td>and how these issues may or may not be</td>
<td>1.1.1.10</td>
<td>1.2.1.3c-d</td>
<td>1.2.1.1</td>
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<td>resolved.</td>
<td>1.1.1.12</td>
<td>1.2.2.2c-e</td>
<td>1.2.1.1</td>
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<td>1.1.2.2</td>
<td>1.2.2.2i-m</td>
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<td>1.1.2.9</td>
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<td>1.1.3.3</td>
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<td>1.1.3.4</td>
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<tr>
<td>1E Translation style and accuracy</td>
<td>1.1.1.10</td>
<td>1.1.2.6</td>
<td>1.1.2.8</td>
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<tr>
<td>To identify specific areas of potential or actual translation error contained in transcripts and how they affect the flow of communication in court.</td>
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<tr>
<td>1F Translation style and accuracy</td>
<td>1.1.1.10</td>
<td>1.1.2.10</td>
<td>1.1.3.8</td>
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<td>To determine what evidence, if any, there is of pragma-linguistic failure in transcripts in relation to alleged use of code words and/or jargon.</td>
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<td>1G Intelligence support</td>
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<td>1.1.3.8</td>
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<tr>
<td>To determine the level of background information and intelligence support provided to interpreters/translators.</td>
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<td>1H Working environment</td>
<td>1.1.1.10</td>
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<td>1.1.3.8</td>
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<tr>
<td>To determine how the working environment may or may not impact on the translation process.</td>
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<td>1I Working environment</td>
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<td>1.1.1.5</td>
<td>1.1.1.10</td>
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<tr>
<td>To determine whether or not a unique genre of language is used in transcripts.</td>
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<tr>
<td>1J Additional information</td>
<td>1.2.1.4</td>
<td>1.2.2.4</td>
<td>1.2.3.6</td>
</tr>
<tr>
<td>To collect additional information of relevance.</td>
<td></td>
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</tbody>
</table>

* Some questions may contribute to acquiring information needed to meet more than one supporting objective.
Appendix E: Tier 2 data collection plan cross-reference – Group 2

Objective: To determine how the principles of a cryptologic language capability are applied in a traditional security environment

Table E1: Supporting objectives/data collection cross-referencing*

<table>
<thead>
<tr>
<th>Supporting objectives</th>
<th>Question</th>
<th>Probing questions</th>
<th>Thesis</th>
</tr>
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<tr>
<td>(see referenced questionnaires and interview schedules)</td>
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<td>2A Experience</td>
<td>2.1.1.1</td>
<td>2.1.1.1a-d</td>
<td>Throughout</td>
</tr>
<tr>
<td>To determine the experience and</td>
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<td>2.1.2.1a-c</td>
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</tr>
<tr>
<td>operating environment of interviewed</td>
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<tr>
<td>cryptologic linguists and supervisors/</td>
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<tr>
<td>clients in relation to transcripts/</td>
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<td>reports from electronic surveillance.</td>
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<tr>
<td>2B Skills and training</td>
<td>2.1.1.2</td>
<td>2.1.1.2a-i</td>
<td>4.4.1</td>
</tr>
<tr>
<td>To identify any skills gap that may</td>
<td>2.1.2.2</td>
<td>2.1.2.2a-h</td>
<td>4.4.2</td>
</tr>
<tr>
<td>exist between the skills held by</td>
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<td>academically trained translators and</td>
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<td>interpreters and those skills required</td>
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<td>to perform the roles of cryptologic</td>
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<td>linguist in relation to producing</td>
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<tr>
<td>transcripts from electronic surveillance, and to determine how any skills gap may be overcome.</td>
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<tr>
<td>2C Translation style and accuracy</td>
<td>2.1.1.3b-f</td>
<td></td>
<td>4.4.4</td>
</tr>
<tr>
<td>To identify problematic areas of</td>
<td>2.1.1.3h-m</td>
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</tr>
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<td>transcripts, the frequency of</td>
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</tr>
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<td>occurrence, and potential causal</td>
<td>2.1.2.3a</td>
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<tr>
<td>factors.</td>
<td>2.1.2.3g-i</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2D Translation style and accuracy</td>
<td>2.1.1.3o</td>
<td></td>
<td>4.4.4</td>
</tr>
<tr>
<td>To determine the impact inaccurate</td>
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</tr>
<tr>
<td>transcripts have on meeting operational and strategic objectives and how these issues may or may not be resolved.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2E Translation style and accuracy</td>
<td>2.1.1.3c</td>
<td></td>
<td>4.4.4</td>
</tr>
<tr>
<td>To identify specific areas of potential or actual translation error contained in transcripts and how they might affect operational objectives</td>
<td>2.1.1.3j-l</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2F Translation style and accuracy</td>
<td>2.1.1.3f-h</td>
<td></td>
<td>4.4.4</td>
</tr>
<tr>
<td>To determine the likelihood of pragma-</td>
<td>2.1.2.3h-j</td>
<td></td>
<td></td>
</tr>
<tr>
<td>linguistic failure in transcripts in relation to the use of code words and/or jargon.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2G Intelligence support</td>
<td>2.1.1.4</td>
<td>2.1.1.4a-d</td>
<td>4.4.3</td>
</tr>
<tr>
<td>To determine the level of background</td>
<td>2.1.2.4</td>
<td>2.1.2.4a-e</td>
<td></td>
</tr>
<tr>
<td>information and intelligence support</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>provided to linguists.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 2H Working environment
To determine how the working environment may or may not impact on the translation process.

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Specifics</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1.1.5</td>
<td>2.1.2.5</td>
</tr>
<tr>
<td>2.1.1.5d</td>
<td>2.1.1.5f-g</td>
</tr>
<tr>
<td>2.1.2.1c</td>
<td>2.1.2.3a-c</td>
</tr>
<tr>
<td>2.1.2.3f</td>
<td>2.1.2.5a-c</td>
</tr>
</tbody>
</table>

### 2I Working environment
To determine whether or not a unique genre of language is used in transcripts.

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Specifics</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1.1.3</td>
<td>2.1.2.5</td>
</tr>
<tr>
<td>2.1.1.3a</td>
<td>2.1.1.3i</td>
</tr>
<tr>
<td>2.1.1.3n-o</td>
<td>2.1.1.5a-c</td>
</tr>
<tr>
<td>2.1.1.5e</td>
<td>2.1.2.3a</td>
</tr>
<tr>
<td>2.1.2.5a-c</td>
<td></td>
</tr>
</tbody>
</table>

### 2J Additional information
To collect additional information of relevance.

<table>
<thead>
<tr>
<th>Subsection</th>
<th>Specifics</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1.1.6</td>
<td>2.1.2.6</td>
</tr>
<tr>
<td>2.1.1.6a</td>
<td>2.1.2.6a</td>
</tr>
</tbody>
</table>

* Some questions may contribute to acquiring information required to meet more than one supporting objective.
Appendix F: 1.1.1 Questionnaire – Court interpreter

- This questionnaire will take approximately 5 to 10 minutes to complete.
- The objective of this questionnaire is to collect data relating to the use in court of electronic surveillance transcripts translated from languages other than English (LOTE).
- For the purposes of this research, ‘transcript’ refers to English transcripts having been translated from communication intercepted and conveyed in a LOTE.
- Please place an ‘X’ in the box or circle your corresponding answer.
- Please feel free to add further comments on completion of this questionnaire in the space provided, or discuss them with the researcher (please do not reveal classified information).
- You will remain anonymous.

| 1.1.1.1 Please indicate how long have you been practicing as a court interpreter. |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| Less than a year                | 1 – 5 years     | 5 – 10 years    | More than 10 years |

| 1.1.1.2 How often do you notice that transcripts from LOTE presented in court contain significant inaccuracies or ambiguities that potentially or actually affect judicial outcomes? |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| Never                           | Sometimes       | Quite frequently | Most of the time | Always          |

| 1.1.1.3 In your opinion, indicate how often transcripts from LOTE contain natural English expression? |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| Never                           | Sometimes       | Quite frequently | Most of the time | Always          |

| 1.1.1.4 How often do you detect discrepancies between what is heard in audio recordings played to the court in a LOTE and what is read to the court from the corresponding English transcript? |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| Never                           | Sometimes       | Quite frequently | Most of the time | Always          |

| 1.1.1.5 How often do you hear terms and/or phrases read from transcripts which appear odd or unique to the judicial process? |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| Never                           | Sometimes       | Quite frequently | Most of the time | Always          |

| 1.1.1.6 Based on your experience, how often, do you think that alleged inaccuracies contained in transcripts disrupt and cause significant delays in court proceedings? |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| Never                           | Sometimes       | Quite frequently | Most of the time | Always          |

| 1.1.1.7 How often do you feel that distortions in meaning contained in transcripts may go undetected in court proceedings? |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| Never                           | Sometimes       | Quite frequently | Most of the time | Always          |

| 1.1.1.8 How would you describe the level of difficulty in relation to accurately interpreting questions from counsel based on, and quoting extracts from, transcripts from LOTE? |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| Easy                            | Challenging     | Difficult       | Extremely difficult |
| Any NAATI professional interpreter (level 3) could do it. | Any experienced NAATI professional interpreter (level 3) could do it. | Only some experienced court interpreters could do it. | Only a select few very experienced court interpreters could do it. |

| 1.1.1.9 Do you think transcripts from LOTE provide the court with an objective account of what was contained in the source text (for example, Audio recording in LOTE)? |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|
| Never                           | Sometimes       | Quite frequently | Most of the time | Always          |
1.1.1.10 Do you think that the reason(s) for any discrepancies noted in transcripts from LOTE stem from:

a. Inadequate specific purposes training for law enforcement linguists
b. Incompatible NAATI accreditation standards
c. Influence from the law enforcement environment
d. Lack of access to intelligence/background information provided to translators of transcripts
e. All of the above
f. Unsure

1.1.1.11 Do you believe that language used in transcripts from LOTE represents a type of language unique to the law enforcement environment that is not likely to appear elsewhere?

Not at all | Probably | Definitely | Unsure
---|---|---|---

1.1.1.12 To what extent do you think the quality of present day transcripts have the potential to jeopardise the element of fairness in the judicial process?

Not at all | To some degree | To a concerning degree | To an unacceptable degree
---|---|---|---

Please feel free to add any further comments below.

Thank you for your time and cooperation.
**Appendix G: 1.1.2 Questionnaire – Barrister**

- This questionnaire will take approximately 5 to 10 minutes to complete.
- The objective of this questionnaire is to collect data relating to the use in court of electronic surveillance transcripts translated from languages other than English (LOTE).
- For the purposes of this research, ‘transcript’ refers to English transcripts having been translated from communication intercepted and conveyed in a LOTE.
- Please place an ‘X’ in the box or circle your corresponding answer.
- Please feel free to add further comments on completion of this questionnaire in the space provided, or discuss them with the researcher (please do not reveal classified information).
- You will remain anonymous.

<table>
<thead>
<tr>
<th>1.1.2.1 Please indicate how long have you been practicing as a barrister.</th>
<th>Less than a year</th>
<th>1 – 5 years</th>
<th>5 – 10 years</th>
<th>More than 10 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1.2.2 How often do you notice that English transcripts from LOTE presented in court contain significant inaccuracies or ambiguities?</td>
<td>Never</td>
<td>Sometimes</td>
<td>Quite frequently</td>
<td>Most of the time</td>
</tr>
<tr>
<td>1.1.2.3 In your opinion, please indicate how often English transcripts translated from LOTE contain natural English expression?</td>
<td>Never</td>
<td>Sometimes</td>
<td>Quite frequently</td>
<td>Most of the time</td>
</tr>
<tr>
<td>1.1.2.4 How often do you hear terms and/or phrases read from transcripts which appear odd or unique to the judicial process?</td>
<td>Never</td>
<td>Sometimes</td>
<td>Quite frequently</td>
<td>Most of the time</td>
</tr>
<tr>
<td>1.1.2.5 Based on your experience, how often do you think that alleged inaccuracies contained in transcripts disrupt and cause significant delays in court proceedings?</td>
<td>Never</td>
<td>Sometimes</td>
<td>Quite frequently</td>
<td>Most of the time</td>
</tr>
<tr>
<td>1.1.2.6 How often do you feel that any distortions in meaning contained in transcripts go undetected during trials?</td>
<td>Never</td>
<td>Sometimes</td>
<td>Quite frequently</td>
<td>Most of the time</td>
</tr>
<tr>
<td>1.1.2.7 From your observations and experience working with court interpreters, how would you generally describe the task of examination/cross-examination through an interpreter when putting questions based on, and quoting extracts from, transcripts from LOTE?</td>
<td>Easy</td>
<td>Challenging</td>
<td>Difficult</td>
<td>Extremely difficult</td>
</tr>
<tr>
<td>I’ve found no problems with communicating through any NAATI professional level (3) interpreter.</td>
<td>I’ve found that only experienced NAATI professional level (3) interpreters can facilitate effective questioning in this area.</td>
<td>I’ve found that only some experienced court interpreters can facilitate effective questioning in this area.</td>
<td>I’ve found that only a select few very experienced court interpreters are able to facilitate effective questioning in this area.</td>
<td></td>
</tr>
<tr>
<td>1.1.2.8 Do you think transcripts from LOTE provide the court with an objective account of what was contained in the source text (for example, audio recording in LOTE)?</td>
<td>Never</td>
<td>Sometimes</td>
<td>Quite frequently</td>
<td>Most of the time</td>
</tr>
</tbody>
</table>
1.1.2.9 Do you think that the reason(s) for any discrepancies noted in transcripts from LOTE stem from:
   a. Inadequate specific purposes training for law enforcement translators
   b. Incompatible NAATI accreditation standards
   c. Influence from the law enforcement environment
   d. Lack of access to intelligence/background information available to translators of transcripts
   e. All of the above
   f. Unsure

1.1.2.10 Do you believe that language used in transcripts from LOTE represent a genre of language unique to the law enforcement environment?

<table>
<thead>
<tr>
<th>Not at all</th>
<th>Probably</th>
<th>Definitely</th>
<th>Unsure</th>
</tr>
</thead>
</table>

1.1.2.11 To what extent do you think the quality of present day transcripts have the potential to jeopardise the element of fairness in the judicial process?

<table>
<thead>
<tr>
<th>Not at all</th>
<th>To some degree</th>
<th>To a concerning degree</th>
<th>To an unacceptable degree</th>
</tr>
</thead>
</table>

Please feel free to add any further comments below.

Thank you for your time and cooperation.
**Appendix H: 1.1.4 Questionnaire – Law enforcement interpreter/translator**

- This questionnaire will take approximately 5 minutes to complete.
- The objective of this questionnaire is to collect data relating to the process of producing electronic surveillance transcripts from languages other than English (LOTE).
- For the purposes of this research, 'transcript' refers to English transcripts having been translated from communication intercepted and conveyed in a LOTE.
- Please place an ‘X’ in the box or circle your corresponding answer.
- Please feel free to add further comments on completion of this questionnaire in the space provided, or discuss them with the researcher (please do not reveal classified information).
- You will remain anonymous.

### 1.1.4.1. For how long were you/have you been involved in producing electronic surveillance transcripts from LOTE?

<table>
<thead>
<tr>
<th>Less than 6 months</th>
<th>6 months - 1 year</th>
<th>1 - 3 years</th>
<th>More than 3 years</th>
</tr>
</thead>
</table>

### 1.1.4.2. How would you rate your sense of inclusion as a team member of the investigation process?

<table>
<thead>
<tr>
<th>Not at all</th>
<th>To some degree</th>
<th>Mostly integrated</th>
<th>Fully integrated</th>
</tr>
</thead>
<tbody>
<tr>
<td>I felt isolated and not involved in the investigative process other than to produce transcripts from LOTE.</td>
<td>I felt I was involved and valued to some degree as a member of the team.</td>
<td>I felt I was considered an important member of the team and felt that my skills and advice were valued.</td>
<td>I was engaged in all relevant aspects of the investigation process and fully supported which enabled me to provide quality translations to support workplace objectives.</td>
</tr>
</tbody>
</table>

### 1.1.4.3. How relevant do you think NAATI accreditation standards of assessment are to transcription tasks undertaken for law enforcement purposes?

<table>
<thead>
<tr>
<th>Not at all</th>
<th>Some relevance</th>
<th>Mostly relevant</th>
<th>Highly relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAATI accreditation standards are not related to the skills required for transcription tasks.</td>
<td>NAATI accreditation standards are partially relevant to transcription tasks.</td>
<td>NAATI accreditation testing standards reflect most skills required of transcription tasks</td>
<td>NAATI accreditation standards accurately reflect the skills required to effectively carry out transcription tasks.</td>
</tr>
</tbody>
</table>

### 1.1.4.4. Based on your experience, do you think that transcripts from electronic surveillance are objectively translated?

<table>
<thead>
<tr>
<th>Not at all</th>
<th>Sometimes</th>
<th>Most of the time</th>
<th>Unsure</th>
</tr>
</thead>
</table>

### 1.1.4.5. How satisfied were you with the final versions of your translations as they appeared in the form of transcripts?

<table>
<thead>
<tr>
<th>Completely unsatisfied</th>
<th>Disappointed</th>
<th>Satisfied</th>
<th>Very satisfied</th>
</tr>
</thead>
</table>
The final translation was nothing like I would normally have produced. The final translation did not quite read the way I would have normally produced it. My final translation was objective and finalised the way I would have normally produce it. I was engaged in the investigation process and had access to the information I needed to produce an accurate and reliable translation.

1.1.4.6. Do you believe that your ability to translate would improve in terms of accuracy and reliability if you had full access to intelligence data and received formal analysis training?

<table>
<thead>
<tr>
<th>Not at all</th>
<th>Probably</th>
<th>Definitely</th>
<th>Unsure</th>
</tr>
</thead>
</table>

1.1.4.7. Have you ever received formal analysis training relating to law enforcement activity?

YES/NO

1.1.4.8. How would you rate your access to background information provided by law enforcement to assist with making sense of the source text?

<table>
<thead>
<tr>
<th>Very Poor</th>
<th>Poor</th>
<th>Good</th>
<th>Very Good</th>
<th>Excellent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No background information provided at all</td>
<td>Some data provided but not enough</td>
<td>Access to enough data</td>
<td>Access to more than enough data</td>
<td>Access to all available data</td>
</tr>
</tbody>
</table>

1.1.4.9. To what degree, if at all, do you feel the working environment influenced the way in which you translated the source text?

<table>
<thead>
<tr>
<th>No influence</th>
<th>Some influence</th>
<th>Much influence</th>
<th>Extreme influence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was able to produce a purely objective translation. Law enforcement context made no difference to how I produced the target text.</td>
<td>Felt compelled to consider workplace objectives having some influence over how the translation was presented. May result in potential risk of inaccuracy or ambiguity.</td>
<td>Felt compelled to fulfil workplace expectations to produce the type of translation usually required. Objectiveness is sacrificed for workplace harmony and employment security. Some risk of inaccuracy or ambiguity.</td>
<td>Felt that there was no choice other than to produce the type of translation that met workplace objectives. A high risk of inaccuracy or ambiguity exists due to inability to produce an objective translation.</td>
</tr>
</tbody>
</table>

1.1.4.10. Indicate on the scale below how you felt you were or were not trusted in a law enforcement environment to produce accurate and reliable translations.

<table>
<thead>
<tr>
<th>No trust</th>
<th>Some trust</th>
<th>Average trust</th>
<th>A lot of trust</th>
<th>Total trust</th>
</tr>
</thead>
<tbody>
<tr>
<td>I felt they didn’t trust me at all</td>
<td>I felt there was some trust but with reservation</td>
<td>I felt I was trusted as much as anyone else in the workplace</td>
<td>I felt I was trusted more than most in the workplace</td>
<td>I felt I was trusted completely.</td>
</tr>
</tbody>
</table>

Please feel free to add any further comments below

Thank you for your time and cooperation
Appendix I: 2.1.1 Questionnaire – Cryptologic linguist

- This questionnaire will take approximately 5 minutes to complete.
- The objective of this questionnaire is to collect data relating to the process of producing electronic surveillance transcripts from languages other than English (LOTE).
- For the purposes of this research, ‘transcript’ refers to English transcripts having been translated from communication intercepted and conveyed in a LOTE.
- Please place an ‘X’ in the box or circle your corresponding answer.
- Please feel free to add further comments on completion of this questionnaire in the space provided, or discuss them with the researcher (please do not reveal classified information).
- You will remain anonymous.

<table>
<thead>
<tr>
<th>2.1.1.1. For how long were you/have you been involved in producing electronic surveillance transcripts and/or operational reports from LOTE?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 6 months</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2.1.1.2. How would you rate your sense of inclusion as a member of an operations team?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
</tr>
<tr>
<td>I felt isolated and not involved in the operations team other than to produce transcripts/reports from LOTE.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2.1.1.3. How relevant do you think interpreting and translating skills alone are to transcription tasks undertaken for operational purposes?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
</tr>
<tr>
<td>Interpreting and translation skills are not related to the skills required for transcription tasks.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2.1.1.4. Based on your experience, do you think that transcripts from electronic surveillance are objectively translated?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2.1.1.5. How satisfied were you with the final versions of your translations as they appeared in the form of transcripts?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completely unsatisfied</td>
</tr>
</tbody>
</table>
The final translation was nothing like I would normally have produced.

The final translation did not quite read the way I would have normally produced it.

My final translation was objective and finalised the way I would have normally produce it.

I was engaged in the operational process and had access to the information I needed to produce an accurate and reliable translation.

2.1.1.6. Have you ever received formal analysis training? YES/NO

2.1.1.7. Do you believe that your ability to translate was improved in terms of accuracy and reliability having had full access to intelligence data and having received formal analysis training?

Not at all  Probably  Definitely  Unsure

2.1.1.8. How would you rate your access to background/intelligence information to assist with making sense of the source text during translation?

Very Poor  Poor  Good  Very Good  Excellent

No background information provided at all  Some data provided but not enough  Access to enough data  Access to more than enough data  Access to all available data

2.1.1.9. To what degree, if at all, do you feel the working environment influenced the way in which you translated the source text?

No influence  Some influence  Much influence  Extreme influence

Was able to produce a purely objective translation. The working environment made no difference to how I produced the target text.

Felt compelled to consider workplace objectives having some influence over how the translation was presented. May result in potential risk of inaccuracy or ambiguity.

Felt compelled to fulfil workplace expectations to produce the type of translation usually required. Objectiveness is sacrificed for workplace harmony and employment security. Some risk of inaccuracy or ambiguity.

Felt that there was no choice other than to produce the type of translation that met workplace objectives. A high risk of inaccuracy or ambiguity exists due to inability to produce an objective translation.

2.1.1.10. Indicate on the scale below how you felt you were or were not trusted in an operational environment to produce accurate and reliable translations.

No trust  Some trust  Average trust  A lot of trust  Total trust

I felt they didn’t trust me at all  I felt there was some trust but with reservation  I felt I was trusted as much as anyone else in the workplace  I felt I was trusted more than most in the workplace  I felt I was trusted completely.

Please feel free to add any further comments below

Thank you for your time and cooperation
Appendix J: 1.2.1 Semi-structured interview schedule – Court interpreter

- This interview follows the questionnaire and will take approximately 30 minutes to complete.
- The questions seek to provide further opportunity to comment on how translated transcripts affect judicial processes.
- For the purposes of this research, ‘transcript’ refers to English transcripts having been translated from intercepted communication conveyed in a language other than English (LOTE). For example, transcripts of telephone conversations conveyed in LOTE.
- Please feel free to discuss any related issues you feel are relevant to this survey.
- This interview is designed to collect data in relation to the use in court of electronic surveillance transcripts translated from languages other than English (LOTE). Topic areas include:
  1. Your experience
  2. Translation style and accuracy
  3. The court environment
  4. Other information of relevance
- You will remain anonymous.

<table>
<thead>
<tr>
<th>Question</th>
<th>Probing questions</th>
<th>Objective</th>
<th>Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experience</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 1.2.1.1 Please provide a brief outline of your court interpreting experience? | 1.2.1.1a In which court do you do most of your interpreting?  
1.2.1.1b In which area of crime do you mostly find yourself interpreting where transcripts are involved? | 1A. To determine the experience and operating environment of the interviewee. | Allow the interviewee to talk liberally about their level of experience as a court interpreter and what types of trials they usually interpret for. |
<p>| Translation style and accuracy                |                                                        |                                               |                                                                          |
| 1.2.1.2. Based on your court interpreting experience, please describe the types of problems, if any, you have encountered | 1.2.1.2a What particular aspects of the language used in transcripts seem to be problematic? | 1C. To identify problematic areas of transcripts, the frequency of occurrence, and potential causal factors. | Upon introducing the topic of transcripts, remind the interviewee that this interview is only concerned with |</p>
<table>
<thead>
<tr>
<th>Question</th>
<th>Probing questions</th>
<th>Objective</th>
<th>Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>relating to transcripts translated from LOTE?</td>
<td>1.2.1.2b How often, if at all, are kinship terms of address misrepresented in transcripts? 1.2.1.2c What examples are you able to provide in relation to how reference words might have been mistranslated or wrongly used in transcripts? 1.2.1.2d How does the incorrect pronunciation of names, terms of address and other LOTE words quoted from transcripts adversely affect the judicial process? 1.2.1.2e How does the alleged use of jargon and/or code words appearing in transcripts potentially cause confusion in the interpreting process? 1.2.1.2f How frequently would you say that alleged jargon and/or code words are confused for everyday manner of speech? 1.2.1.2g Please give any examples of where alleged jargon and/or code words were found to be incorrectly translated. 1.2.1.2h Are these recurring problems? If so, how frequently do you encounter them? 1.2.1.2i Why do you think they haven’t been addressed? 1.2.1.2j What factors do you think cause these problems? (for example, Professional ability of person producing transcripts from electronic surveillance product, not ‘court transcripts’ which are accounts of previous proceedings. However, where transcripts from electronic surveillance have been quoted in trials from previous court transcripts, then this information remains relevant. Ease into the probing questions to allow the interviewee to reflect on their experiences and to gather their thoughts.</td>
<td>1D. To determine the impact inaccurate transcripts have on judicial processes and how these issues may or may not be resolved. 1E. To identify specific areas of potential or actual translation error contained in transcripts and how do they affect the flow of communication in court. 1F. To determine what evidence, if any, there is of pragma-linguistic failure in transcripts in relation to alleged use of code words and/or jargon.</td>
<td>transcripts from electronic surveillance product, not ‘court transcripts’ which are accounts of previous proceedings. However, where transcripts from electronic surveillance have been quoted in trials from previous court transcripts, then this information remains relevant. Ease into the probing questions to allow the interviewee to reflect on their experiences and to gather their thoughts.</td>
</tr>
<tr>
<td>Question</td>
<td>Probing questions</td>
<td>Objective</td>
<td>Strategy</td>
</tr>
<tr>
<td>----------</td>
<td>------------------</td>
<td>-----------</td>
<td>----------</td>
</tr>
<tr>
<td>the transcript, environmental influence, other reasons).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2.1.2k How do you think these problems might be overcome? (for example, Improved accreditation processes, better training, quality control etc).</td>
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<td>1.2.1.2l How frequently are trials delayed due to disputes concerning the meaning conveyed in transcripts?</td>
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<td>1.2.1.2m How do these discrepancies affect your job as an interpreter?</td>
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<td>1.2.1.2n How frequently, if ever, are you called upon to comment on the accuracy of transcripts?</td>
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<tr>
<td>1.2.1.2o How are transcripts in dispute reconciled?</td>
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<td>1.2.1.2p How frequently do you think inaccuracies contained in court transcripts go undetected by those who are unfamiliar with the source language?</td>
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<td>1.2.1.2q What effect does legal questioning from transcripts have on the transfer of meaning?</td>
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<td>1.2.1.2r What action is taken by a court interpreter he/she is the only one who detects ambiguities or inaccuracies in transcripts?</td>
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<td>Question</td>
<td>Probing questions</td>
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<tr>
<td><strong>The court environment</strong></td>
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<tr>
<td>1.2.1.3. What specific aspects, if any, of transcripts translated from LOTE do you think are unique to the legal environment?</td>
<td>1.2.1.3a Please comment on any terms used in transcripts that you feel are not normally used in everyday speech or appear to be only used in a court environment (for example, personal pronouns, reference words, kinship terms of address etc).</td>
<td>I. To determine whether or not a unique genre of language is used in transcripts.</td>
<td>This area focuses on identifying specific language used in transcripts that appears to be unique to the law enforcement environment. It does not relate so much to legal terms that may be used, but the way in which some linguistic terms are translated specifically for court purposes. Allow the interviewee to talk freely about the frustrations he/she experiences due to the impact on the communication process from ambiguous or inaccurate translations found in transcripts.</td>
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<td></td>
<td>1.2.1.3b Why do you think these terms are unique to transcripts used in court?</td>
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<td></td>
<td>1.2.1.3c How might these specific terms cause difficulty for you as an interpreter?</td>
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<td></td>
<td>1.2.1.3d How do you think these unique terms might distort the meaning of evidence presented in court?</td>
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<tr>
<td><strong>Additional information</strong></td>
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<tr>
<td>1.2.1.4 This interview aimed to identify how translated transcripts affect judicial processes. Is there any further information you feel is relevant that you would like to discuss?</td>
<td>1.2.1.4a Are you content with the way in which this interview was conducted?</td>
<td>II. To elicit any additional information the interviewee feels may be relevant and to draw the interview to a close.</td>
<td>Ensure that the interviewee is comfortable with the conduct of the interview and thank them for their cooperation. Ensure the interviewee receives a photocopy of the written consent form. Leave them a business card.</td>
</tr>
</tbody>
</table>
Appendix K: 1.2.2 Semi-structured interview schedule – Barrister

- This interview follows the questionnaire and will take approximately 30 minutes to complete.
- The questions seek to provide further opportunity to comment on how translated transcripts affect judicial processes.
- For the purposes of this research, ‘transcript’ refers to English transcripts having been translated from intercepted communication conveyed in a language other than English (LOTE). For example, transcripts of telephone conversations conveyed in LOTE.
- Please feel free to discuss any related issues you feel are relevant to this survey.
- This interview is designed to collect data in relation to the use in court of electronic surveillance transcripts translated from languages other than English (LOTE). Topic areas include:
  1. Your experience
  2. Translation style and accuracy
  3. The legal environment
  4. Other information of relevance
- You will remain anonymous.

<table>
<thead>
<tr>
<th>Question</th>
<th>Probing questions</th>
<th>Objective*</th>
<th>Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.2.2.1. Please provide an overview of your experience as a barrister in areas relating to serious and organised crime.</td>
<td>1.2.2.1a Which areas of serious and organised crime do you mostly provide services for? 1.2.2.1b How often do you work with interpreters in court? 1.2.2.1c Which areas of serious and organised crime mainly involve the submission of transcripts translated from LOTE as evidence?</td>
<td>1A. To establish the depth of experience and usual operating environment of the interviewee.</td>
<td>Allow the interviewee to talk liberally about their level of experience as a barrister and what types of trials they usually engage in.</td>
</tr>
<tr>
<td>Question</td>
<td>Probing questions</td>
<td>Objective*</td>
<td>Strategy</td>
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<tr>
<td>1.2.2.1d In relation to transcripts, which LOTE have you mostly worked with?</td>
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<tr>
<td><strong>Transcript style and accuracy</strong></td>
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<tr>
<td>1.2.2.2. Based on your experience as a barrister, please describe how important the style and accuracy of transcripts is to the effective flow of communication in court.</td>
<td>1.2.2.2a Can you identify any particular aspects of language used in transcripts that might disrupt the flow of communication in court? 1.2.2.2b How might kinship terms of address be problematic in transcripts? 1.2.2.2c What examples are you able to provide in relation to how reference words might have caused confusion incorrectly used in transcripts? 1.2.2.2d How does the incorrect pronunciation of names, terms of address and other LOTE words quoted from transcripts adversely affect the judicial process? 1.2.2.2e Does the alleged use of jargon and/or code words appearing in transcripts potentially cause confusion in the interpreting process? 1.2.2.2f If possible, please give any examples of where alleged jargon and/or code words were found to be incorrectly translated. 1.2.2.2g Do you find these to be recurring problem areas? 1.2.2.2h What factors do you attribute to be the primary cause of these problem?</td>
<td>1C. To identify problematic areas of transcripts, the frequency of occurrence, and potential causal factors. 1D. To determine the impact inaccurate transcripts have on judicial processes and how these issues may or may not be resolved? 1E. To identify specific areas of potential or actual translation error contained in transcripts and how they affect the flow of communication in court. 1F. To determine what evidence, if any, there is of pragma-linguistic failure in transcripts in relation to alleged use of code words and/or jargon?</td>
<td>Upon introducing the topic of transcripts, remind the interviewee that this interview is only concerned with transcripts from electronic surveillance product, not ‘court transcripts’. However, where transcripts from electronic surveillance have been quoted in trials from previous court transcripts, then this information remains relevant. Ease into the probing questions to allow the interviewee to reflect on their experiences and to gather their thoughts. Allow the interviewee to talk freely about the frustrations he/she experiences due to the impact on the communication process from ambiguous or inaccurate translations found in transcripts.</td>
</tr>
<tr>
<td>Question</td>
<td>Probing questions</td>
<td>Objective*</td>
<td>Strategy</td>
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</table>
| areas? (for example, Professional ability of person producing the transcript, environmental influence, other reasons). | 1.2.2.2i How do you think these problems might be overcome? (for example, Improved accreditation processes, better training, quality control etc).  
1.2.2.2j How frequently, if at all, are trials delayed due to issues concerning the accuracy transcripts?  
1.2.2.2k What quality control processes are in place to identify inaccuracies contained in transcripts?  
1.2.2.2l How are transcripts in dispute reconciled?  
1.2.2.2m What other particular aspects of conveying meaning often disrupt the flow of communication between transcript, barrister, interpreter and witness? | | |

**The legal environment**

1.2.2.3. What specific aspects, if any, of transcripts translated from LOTE do you think are unique to the legal environment?  
1.2.2.3a Please comment on any specific terms used in transcripts that you feel are not normally used in everyday speech or appear to be only used in a court environment (for example, personal pronouns, reference words, kinship terms of address etc). | II. To determine whether or not a unique genre of language is used in transcripts | This area focuses on identifying specific language used in transcripts that appears to be unique to the law enforcement environment. It does not relate so much to legal terms that may be used, but the way in which some linguistic terms are translated specifically for court purposes. |
<table>
<thead>
<tr>
<th>Question</th>
<th>Probing questions</th>
<th>Objective*</th>
<th>Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.2.2.3b</td>
<td>Why do you think these terms are unique to transcripts used in court?</td>
<td></td>
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</tr>
<tr>
<td>1.2.2.3c</td>
<td>How might these specific terms cause difficulty for you as a barrister?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2.2.3d</td>
<td>How do you think these unique terms might affect the reliability of evidence presented in court?</td>
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</tbody>
</table>

**Additional information**

1.2.2.4 This interview aimed to identify how translated transcripts affect judicial processes. Is there any further information you feel is relevant that you would like to discuss?

<table>
<thead>
<tr>
<th>1.2.2.4a</th>
<th>Are you content with the way in which this interview was conducted?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.2.2.4b</td>
<td>1J. To elicit any additional information the interviewee feels may be relevant and to draw the interview to a close.</td>
</tr>
</tbody>
</table>

Reaffirm the main points raised by the interviewee. Ensure that the interviewee is comfortable with the conduct of the interview and thank them for their cooperation. Reassure the interviewee that they will remain anonymous for the purposes of this research. Ensure the interviewee receives a photocopy of the written consent form. Provide a business card.

* Objective designators not sequential – used to cross-reference with table of objectives
Appendix L: 1.2.4 Semi-structured interview schedule – Law enforcement interpreter/translator

- This interview is expected to take approximately 60 minutes to complete.
- For the purposes of this research, ‘transcript’ refers to English transcripts having been translated from intercepted communication conveyed in a language other than English (LOTE). For example, transcripts of telephone conversations conveyed in LOTE.
- Please feel free to discuss any related issues you feel are relevant to this survey.
- This interview is designed to collect data in relation to the employment of interpreters/translators in law enforcement agencies focusing on areas relating to:
  1. Experience
  2. Skills and training
  3. Translation style and accuracy
  4. Intelligence support
  5. Working environment
  6. Other information of relevance
- You will remain anonymous.
- Please do not reveal classified information.

<table>
<thead>
<tr>
<th>Question</th>
<th>Probing questions</th>
<th>Objective</th>
<th>Strategy</th>
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<tbody>
<tr>
<td>Experience</td>
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<tr>
<td>1.2.4.1 Please provide an overview of your experience in relation to</td>
<td>1.2.4.1a What qualifications do you hold as an interpreter and/or translator?</td>
<td>1A. To determine the experience of the interviewee and the</td>
<td>Ease into the interview by inviting the interviewee to talk freely about</td>
</tr>
<tr>
<td>supporting law enforcement operations and producing transcripts in your</td>
<td>How long have you held these qualifications?</td>
<td>operating environment in which he/she works.</td>
<td>their experience in law enforcement and particularly in relation to their</td>
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<tr>
<td>capacity as an interpreter/translator.</td>
<td>1.2.4.1b Why did you choose to work in the area of law enforcement?</td>
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<td>cooperation with interpreters and translators. Raise the issue of</td>
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<td></td>
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<td>electronic surveillance product</td>
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<tr>
<td>Question</td>
<td>Probing questions</td>
<td>Objective</td>
<td>Strategy</td>
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<tr>
<td>1.2.4.1c</td>
<td>What types of law enforcement operations have you supported involving areas of serious and organised crime? 1.2.4.1d Have you provided operational support to tactical operations or produced transcripts for evidentiary purposes, or both?</td>
<td></td>
<td>and how important it has become in the modern age for evidentiary purposes. Try to get a feeling for how integrated interpreters and translators become as part of a team in an operational environment.</td>
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**Skills and training**

1.2.4.2 What specialised skills, if any, do you think are required to produce transcripts from LOTE and to support law enforcement operations?

<table>
<thead>
<tr>
<th>Probing questions</th>
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<tbody>
<tr>
<td>1.2.4.2a</td>
<td>Do you think community interpreters and translators have the prerequisite skills necessary to effectively produce transcripts and to support law enforcement operations? 1.2.4.2b What gaps in skill level have you noted between NAATI accreditation standards and skills required to produce transcripts from electronic surveillance? 1.2.4.2c How is any skills gap overcome? 1.2.4.2d What differences, if any, are there between the way you provide operational support and how you produce transcripts for evidentiary purposes? 1.2.4.2e What specialised training is provided, if any, to linguists to enable them to produce translated information for operational and/or evidentiary purposes? 1.2.4.2f Have you ever had any form of intelligence training? 1.2.4.2g What analysis training, if any, is provided to interpreters/translators?</td>
<td>1B. To identify any skills gap that may exist between the skills held by community interpreters and those required to produce transcripts from electronic surveillance and how any skills gap may be overcome.</td>
<td>Try to determine the relationship between skills level available from the pool of community interpreters/translators and that required of the law enforcement environment. Focus on national accreditation standards for translators and interpreters and how those standards are regarded by law enforcement. Link any identifiable skills gap with the issue of accuracy. Try to determine how analysis training might factor into the task of producing transcripts.</td>
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<td>Question</td>
<td>Probing questions</td>
<td>Objective</td>
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<tr>
<td>1.2.4.2h</td>
<td>How do you think analysis training might help law enforcement linguists produce better quality transcripts?</td>
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<td>1.2.4.2i</td>
<td>Please identify any area of training that you think might enable you to provide better quality transcripts and support to law enforcement operations.</td>
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<tr>
<td><strong>Translation – style and accuracy</strong></td>
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<td>1.2.4.3</td>
<td>What guidance, if any, is provided to interpreters and translators in relation to the style and accuracy required of transcripts?</td>
<td>1.2.4.3a Do you think transcripts are produced in natural everyday English or are they translated in a particular style for court purposes? 1.2.4.3b In relation to transcripts, what difficulties have you experienced producing an accurate translation? 1.2.4.3c What particular linguistic aspects of producing transcripts, if any, have you found to be problematic? How are they resolved? 1.2.4.3d Do any problems arise when lexical accuracy is compromised for the conveyance of overall sense? 1.2.4.3e How is any conflict between literal accuracy and the conveyance of sense managed when preparing transcripts for evidentiary purposes? 1.2.4.3f Have you experienced difficulty in relation to translating jargon/cover or code words used in conversation? What strategies did you use to translate these terms? (i.e. literally or contextually with the support of</td>
<td>11. To determine whether or not a unique genre of language is used in transcripts 1C. To identify problematic areas of transcripts, the frequency of occurrence, and potential causal factors.</td>
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<td>Question</td>
<td>Probing questions</td>
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<td>background information, or a combination of both?</td>
<td>1.2.4.3g When jargon and/or code words are intercepted, what instructions, if any, are provided to interpreters/translators in relation to how they are to be translated in the transcript?</td>
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<td></td>
<td>1.2.4.3h Do you see it as an advantage or disadvantage for interpreters/translators to be briefed on the meaning of jargon/code words?</td>
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<td></td>
<td>1.2.4.3i Have you ever had to defend the accuracy of information contained in transcripts from LOTE? (for example, during a ‘voir dire’ in court) If so, what were the issues in contention?</td>
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<td></td>
<td>1.2.4.3j Have you experienced difficulty in relation to translating reference words so that they make sense within the context of the conversation? If so, please provide examples of difficulties encountered.</td>
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<td>1.2.4.3k Have you experienced difficulty in relation to translating kinship terms or other terms of address? Please provide examples.</td>
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<td>1.2.4.3l Does the translation of tense cause any difficulties when translating? How do you determine tense when it is not explicitly stated in the source text?</td>
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<td></td>
<td>1.2.4.3m How do you think these difficulties you have identified may be overcome?</td>
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<td>Question</td>
<td>Probing questions</td>
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<tr>
<td>1.2.4.3n Have you ever been challenged in relation to the way you’ve translated the source text? Please provide details.</td>
<td>IG. To determine the level of background information and intelligence support provided to interpreters/translators?</td>
<td>Recap the key points raised by the interviewee.</td>
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<td>1.2.4.3o How are transcripts quality controlled?</td>
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<tr>
<td><strong>Intelligence support</strong></td>
<td>1.2.4.4 How well do you think you were/are briefed to carry out your tasks effectively?</td>
<td>1.2.4.4a Do you feel you have access to enough background information in order to effectively carry out your tasks?</td>
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<td></td>
<td>1.2.4.4b How do you think that full access to intelligence data may improve your ability to provide better quality transcripts and/or operational support?</td>
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<td></td>
<td>1.2.4.4c Do you think that intelligence analysis training and support might better equip you to translate coded speech and written text?</td>
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<td></td>
<td><strong>Working environment</strong></td>
<td>1H. To identify how the working environment may or may not impact on the translation process.</td>
<td>Recap the key points raised by the interviewee.</td>
</tr>
<tr>
<td>1.2.4.5 In what ways do you think the law enforcement environment might influence the way transcripts are translated?</td>
<td>1.2.4.5a Do you think transcripts represent an objective and accurate account of what is conveyed in LOTE? If not, why do you think this is the case?</td>
<td>1I. To determine whether or not a unique genre of language is used in transcripts.</td>
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<td></td>
<td>1.2.4.5b What guidance, if any, is provided to interpreters/translators in relation to assigning meaning to reference words within the context of the intercepted conversation?</td>
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<td></td>
<td>1.2.4.5c What aspects of the working environment, if any, of producing transcripts restricts you in your ability to provide purely objective translations that clearly and accurately convey intended meaning?</td>
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<td>Question</td>
<td>Probing questions</td>
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<td>Strategy</td>
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<tr>
<td>1.2.4.5d</td>
<td>What terms, if any, used in transcripts are unique to the law enforcement environment?</td>
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<tr>
<td>1.2.4.5e</td>
<td>How do you think any of these terms identified as unique may potentially affect the way in which evidence is presented and understood in court?</td>
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<tr>
<td>1.2.4.5f</td>
<td>Have you ever been instructed to change your translation against your best judgement? If so, what were the circumstances?</td>
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<tr>
<td>1.2.4.5g</td>
<td>Have you ever felt you had been influenced to skew the translation in order for the transcript to meet workplace expectations and/or requirements?</td>
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</tr>
<tr>
<td>1.2.4.5h</td>
<td>Do you feel like you are engaged as an integral member of an investigation team?</td>
<td></td>
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</tr>
<tr>
<td>Additional information</td>
<td>1.2.4.6 This interview aimed to identify how translated transcripts are produced for evidentiary purposes. Is there any further information you feel is relevant that you would like to discuss?</td>
<td>1.2.4.6a Are you content with the way in which this interview was conducted?</td>
<td>1.2 To elicit any additional information the interviewee feels may be relevant and to draw the interview to a close. Ensure that the interviewee is comfortable with the conduct of the interview and thank them for their cooperation. Ensure the interviewee receives a photocopy of the written consent form. Leave them a business card.</td>
</tr>
</tbody>
</table>
Appendix M: 1.2.5 Semi-structured interview schedule – Judicial officer

- This interview will take approximately 30 minutes to complete.
- The questions seek to provide you with an opportunity to comment on how translated transcripts affect judicial processes.
- For the purposes of this research, ‘transcript’ refers to English transcripts having been translated from intercepted communication conveyed in a language other than English (LOTE). For example, transcripts of telephone conversations conveyed in LOTE then translated into English.
- Please feel free to discuss any related issues you feel are relevant to this survey.
- This interview is designed to collect data in relation to the use in court of electronic surveillance transcripts translated from LOTE. Topic areas include:
  1. Your experience
  2. Translation style and accuracy
  3. Other information of relevance
- You will remain anonymous

<table>
<thead>
<tr>
<th>Question</th>
<th>Detailed questions</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Experience</strong></td>
<td></td>
<td></td>
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</tbody>
</table>
| 1.2.5.1. Please provide a brief overview of your experience as a Judicial Officer in areas relating to serious and organised crime. | 1.2.5.1a Which areas of serious and organised crime do you mostly preside over?  
1.2.5.1b Generally speaking, how regularly do you require the assistance of interpreters in court in these trials?  
1.2.5.1c Would you agree that transcripts translated from LOTE have become increasingly important to prosecuting offences related to serious and organised crime?  
1.2.5.1d Based on your experience and in relation to translated transcripts, which LOTE have you noted is most prevalent in trials related to drug offences? |        |
<p>| <strong>Transcript style and accuracy</strong>                                        |                                                                                                                                                                                                                  |        |</p>
<table>
<thead>
<tr>
<th>Question</th>
<th>Detailed questions</th>
<th>Notes:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experience</td>
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</tbody>
</table>
| 1.2.5.1. Please provide a brief overview of your experience as a Judicial Officer in areas relating to serious and organised crime. | 1.2.5.1a Which areas of serious and organised crime do you mostly preside over?  
1.2.5.1b Generally speaking, how regularly do you require the assistance of interpreters in court in these trials?  
1.2.5.1c Would you agree that transcripts translated from LOTE have become increasingly important to prosecuting offences related to serious and organised crime?  
1.2.5.1d Based on your experience and in relation to translated transcripts, which LOTE have you noted is most prevalent in trials related to drug offences? |        |
| 1.2.5.2. Based on your experience as Judicial Officer, please describe how important the style and accuracy of transcripts is to the effective flow of communication in court. | 1.2.5.2a Can you identify any particular aspects of language used in translated transcripts that might disrupt the flow of communication in court?  
1.2.5.2b Have you noticed any confusion in the courtroom in relation to the way kinship terms of address have been translated in transcripts?  
1.2.5.2c What examples are you able to provide, if any, in relation to how particular terms contained in transcripts might have caused confusion in for the jury or other members in the courtroom?  
1.2.5.2d How does the incorrect pronunciation of names, terms of address and other LOTE words quoted from transcripts adversely affect the judicial process?  
1.2.5.2e Does the alleged use of jargon and/or code words appearing in translated transcripts cause confusion in the courtroom?  
1.2.5.2f If possible, please provide examples of alleged jargon and/or code words that may have caused confusion.  
1.2.5.2g Do you find any of these terms to be a recurring problem across different trials? |        |
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<th>Question</th>
<th>Detailed questions</th>
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<td><strong>Experience</strong></td>
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</table>
| 1.2.5.1. Please provide a brief overview of your experience as a Judicial Officer in areas relating to serious and organised crime. | 1.2.5.1a Which areas of serious and organised crime do you mostly preside over?  
1.2.5.1b Generally speaking, how regularly do you require the assistance of interpreters in court in these trials?  
1.2.5.1c Would you agree that transcripts translated from LOTE have become increasingly important to prosecuting offences related to serious and organised crime?  
1.2.5.1d Based on your experience and in relation to translated transcripts, which LOTE have you noted is most prevalent in trials related to drug offences? |                                                                                                                                                             |
| **Additional information**                                              |                                                                                                                                                                                                                     |                                                                                                                                                             |
| 1.2.5.3 This interview aimed to identify how translated transcripts affect judicial processes. Is there any further information you feel is relevant that you would like to discuss? | 1.2.5.3a Thank you for your assistance. Are you content with the way in which this interview was conducted?                                                                                                         |                                                                                                                                                             |
Appendix N: 2.1.1 Semi-structured interview schedule – Cryptologic linguist

- This interview is expected to take approximately 60 minutes to complete.
- For the purposes of this research, ‘transcript’ refers to English transcripts having been translated from intercepted communication having been conveyed in a language other than English (LOTE). For example, transcripts of voice communications or other data conveyed in LOTE.
- Please feel free to discuss any related issues you feel are relevant to this survey.
- This interview is designed to collect data in relation to the role of cryptologic linguists in focusing on areas relating to:
  1. Experience
  2. Skills and training
  3. Translation accuracy
  4. Intelligence support
  5. Working environment
- You will remain anonymous.
- Please do not reveal classified information.

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<tr>
<th>Question</th>
<th>Probing questions</th>
<th>Objective</th>
<th>Strategy</th>
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</table>
| Experience                                                              | 2.1.1.1a What qualifications do you hold as a cryptologic linguist? How long have you held these qualifications?  
2.1.1.1b Why did you choose to work in the area of languages?  
2.1.1.1c What types of law enforcement operations have you supported involving areas of serious and organised crime, if any? | 2A. To determine the experience of the interviewee and the operating environment in which he/she works. | Ease into the interview by inviting the interviewee to talk freely about their experience as a cryptologic linguist.  
Raise the issue of electronic surveillance product and how important it is to support operational objectives.  
Try to get a feeling for how integrated cryptologic linguists felt as part of a team in an operational environment. |
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<th>Probing questions</th>
<th>Objective</th>
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<tr>
<td>2.1.1.1d Have you provided operational support to tactical operations or produced transcripts for strategic/evidentiary purposes, or both?</td>
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<tr>
<td><strong>Skills and training</strong></td>
<td><strong>2.1.1.2</strong> What specialised skills, if any, do you think are required to produce transcripts from LOTE and to support operations?</td>
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</table>
| 2.1.1.2a Do you think academically trained interpreters and translators have the prerequisite skills necessary to effectively produce transcripts and to support operations? | 2.1.1.2b What gaps in skill level have you noted between academic accreditation standards and those skills required to produce transcripts from electronic surveillance?  
2.1.1.2c How is any skills gap overcome in your environment?  
2.1.1.2d What differences, if any, are there between the way you provide operational support and how you produce transcripts for evidentiary/strategic purposes?  
2.1.1.2e What specialised training is provided, if any, to linguists to enable them to produce translated information for operational and/or evidentiary/strategic purposes?  
2.1.1.2f Have you ever had any form of intelligence training? | 1B. To identify specific skills required to produce transcripts from electronic surveillance in a traditional security environment. |                                                                           |
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<th>Question</th>
<th>Probing questions</th>
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<tr>
<td>2.1.1.2.2.g What analysis training, if any, is provided to cryptologic linguists?</td>
<td>2.1.1.2h How do you think analysis training assists in producing better quality transcripts?</td>
<td>2.1.1.2i Can you identify any other area of training that may assist linguists in providing better quality transcripts and support to operations?</td>
<td>Try to determine the relationship between skills level of academically qualified interpreters/translator and that required of the operational environment. Touch on national accreditation standards for translators and interpreters and try to ascertain how those standards might equate to skills required during cryptologic operations. Link any identifiable skills gap with the issue of accuracy. Try to determine how analysis training might factor into the task of producing transcripts.</td>
</tr>
<tr>
<td>Translation style and accuracy</td>
<td>2.1.1.3a Do you think transcripts are produced in natural everyday English or are they translated in a particular style for operational/strategic purposes?</td>
<td>2.1.1.3b In relation to transcripts, what difficulties, if any, have you experienced producing an accurate translation?</td>
<td>Try to determine whether or not a unique genre of language is used in transcripts.</td>
</tr>
<tr>
<td>2.1.1.3. What guidance, if any, is provided to cryptologic linguists in relation to the style and accuracy required of transcripts and operational reports?</td>
<td>2.1.1.3c What particular linguistic aspects of producing transcripts, if any, have you found to be problematic? How are they resolved?</td>
<td>2.1.1.3d Do any problems arise when lexical accuracy is compromised for the conveyance of overall sense?</td>
<td>1C. To identify problematic areas of transcripts, the frequency of occurrence, and potential causal factors.</td>
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<td>2.1.1.3e How is any conflict between literal accuracy and the conveyance of sense managed when preparing transcripts?</td>
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<td>2.1.1.3f Have you experienced difficulty in relation to translating jargon/cover or</td>
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<td>1I. To determine whether or not a unique genre of language is used in transcripts</td>
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<td>Question</td>
<td>Probing questions</td>
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<td>code words used in conversation? What strategies did you use to translate these terms? (i.e. literally or contextually with the support of background information, or a combination of both?).</td>
<td>2.1.1.3g When jargon and/or code words are intercepted, what instructions, if any, are provided in relation to how they are to be translated in the transcript? 2.1.1.3h Do you see it as an advantage or disadvantage for interpreters/translators to be briefed on the meaning of jargon/code words? 2.1.1.3i Have you ever had to defend the accuracy of information contained in transcripts from LOTE? 2.1.1.3j Have you experienced difficulty in relation to translating reference words so that they make sense within the context of the conversation? If so, please provide examples of difficulties encountered. 2.1.1.3k Have you experienced difficulty in relation to translating kinship terms or other terms of address? Please provide examples. 2.1.1.3l Does the translation of tense cause any difficulties when translating? How do you determine tense when it is not explicitly stated in the source text?</td>
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<td>Question</td>
<td>Probing questions</td>
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| 2.1.1.3m How do you think these difficulties you have identified may be  | 2.1.1.3m How do you think these difficulties you have identified may be overcome?  
2.1.1.3n Have you ever been challenged in relation to the way you’ve translated the source text? Please provide details.  
2.1.1.3o How are transcripts quality controlled? |                                                                 |                                                                          |
| Overcome?                                                              |                                                                 | 1G. To determine the importance of background information and intelligence support provided to cryptologic linguists in relation to carrying out their tasks. |               |
| 2.1.1.4 How well do you think you were/are briefed to carry out your tasks | 2.1.1.4a How do you think that full access to intelligence information improves the ability of cryptologic linguists to effectively carry out their tasks?  
2.1.1.4b Do you think that intelligence analysis training and support assists cryptologic linguists to translate coded speech and coded written text expressed in LOTE? |                                                                 | Recap the key points raised by the interviewee.               |
| Effectively?                                                           | 2.1.1.4a How do you think that full access to intelligence information improves the ability of cryptologic linguists to effectively carry out their tasks?  
2.1.1.4b Do you think that intelligence analysis training and support assists cryptologic linguists to translate coded speech and coded written text expressed in LOTE? | 1G. To determine the importance of background information and intelligence support provided to cryptologic linguists in relation to carrying out their tasks. |               |
| Intelligence support                                                                                                           |                                                                                                                                            | 1G. To determine the importance of background information and intelligence support provided to cryptologic linguists in relation to carrying out their tasks. |               |
| 2.1.1.5 In what ways do you think the operational environment might influence the way transcripts are translated? | 2.1.1.5a Do you think transcripts are produced in natural everyday English or are they translated in a particular style for specific purposes?  
2.1.1.5b Do you think transcripts represent an objective and accurate account of what is conveyed in LOTE? If not, why do you think this is the case?  
2.1.1.5c What guidance, if any, is provided to cryptologic linguists in | 1H. To identify how the working environment may or may not impact on the translation process.  
1I. To determine whether or not a unique genre of language is used in transcripts. |               |
| Working environment                                                                                                           |                                                                                                                                            | 1H. To identify how the working environment may or may not impact on the translation process.  
1I. To determine whether or not a unique genre of language is used in transcripts. |               |
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<th>Question</th>
<th>Probing questions</th>
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<td>relation to assigning meaning to reference words within the context of the intercepted conversation?</td>
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<td>2.1.1.5d</td>
<td>What aspects of the working environment, if any, of producing transcripts restricts you in your ability to provide purely objective translations that clearly and accurately convey intended meaning?</td>
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<td>2.1.1.5e</td>
<td>What terms, if any, used in transcripts are unique to your environment?</td>
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<td>2.1.1.5f</td>
<td>Have you ever been instructed to change your translation against your best judgement? If so, what were the circumstances?</td>
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<tr>
<td>2.1.1.5g</td>
<td>Have you ever felt you had been influenced to skew the translation in order for the transcript to meet workplace expectations and/or requirements?</td>
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</table>

**Additional information**

| 2.1.1.6 | This interview aimed to identify how translated transcripts are produced for operational and strategic purposes. Is there any further information you feel is relevant that you would like to discuss? | 2.1.1.6a | Are you content with the way in which this interview was conducted? | 1J. To elicit any additional information the interviewee feels may be relevant and to draw the interview to a close. | Ensure that the interviewee is comfortable with the conduct of the interview and thank them for their cooperation. Ensure the interviewee receives a photocopy of the written consent form. Leave them a business card. |
Appendix O: 2.1.2 Semi-structured interview schedule – Supervisor cryptologic linguist

- This interview is expected to take approximately 60 minutes to complete.

- For the purposes of this research, ‘transcript’ refers to English transcripts having been translated from intercepted communication having been conveyed in a language other than English (LOTE). For example, transcripts of voice communications or other data conveyed in LOTE.

- Please feel free to discuss any related issues you feel are relevant to this survey.

- This interview is designed to collect data in relation to the role of cryptologic linguists in focusing on areas relating to:
  1. Your experience
  2. Skills and training
  3. Translation accuracy
  4. Intelligence support
  5. Working environment

- You will remain anonymous.

- Please do not reveal classified information.

<table>
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<tr>
<th>Question</th>
<th>Probing questions</th>
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<tr>
<td><strong>Experience</strong></td>
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<tr>
<td>2.1.2.1 Without compromising issues of security, please outline your experience working with cryptologic linguists in an operational environment.</td>
<td>2.1.2.1a For how long did you work with cryptologic linguists? 2.1.2.1b Do you speak a language other than English yourself? 2.1.2.1c Do you think that cryptologic linguists engaged to support operations feel like they are part of the operational team? Has it always been this way?</td>
<td>1A. To determine the experience of the interviewee and the operating environment in which he/she works.</td>
<td>Ease into the interview by inviting the interviewee to talk freely about their experience with cryptologic operations and particularly in relation to their working relationship with cryptologic linguists. Try to get a feeling for how integrated cryptologic linguists become as part of a team in an operational environment.</td>
</tr>
<tr>
<td>Question</td>
<td>Probing questions</td>
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<tr>
<td>Skills and training</td>
<td></td>
<td>1B. To identify any skills gap that may exist between the skills held by community interpreters and those required to produce transcripts from electronic surveillance and how any skills gap may be overcome.</td>
<td>Try to determine the relationship between skills level available from academically trained interpreters/translators and that required of cryptologic linguists. Link any identifiable skills gap with the issue of accuracy. Try to determine how analysis training might factor into the task of producing transcripts.</td>
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</tbody>
</table>
| 2.1.2.2 In relation to skill level, how well prepared would you say cryptologic linguists are to produce transcripts from LOTE for strategic/operational purposes? | 2.1.2.2a How difficult is it to produce cryptologic linguists who are reliable and adequately proficient in the tasks they are required to perform?  
2.1.2.2b Do you think that translation and interpreting skills alone are enough for cryptologic linguists to produce accurate transcripts?  
2.1.2.2c What gaps in skill level have you noted between academic accreditation standards and skills required to produce transcripts from electronic surveillance?  
2.1.2.2d How is any skills gap overcome?  
2.1.2.2e What specialised training is provided, if any, to linguists to enable them to produce translated information for operational and/or strategic purposes?  
2.1.2.2f What analysis training, if any, is provided to cryptologic linguists?  
2.1.2.2g How do you think analysis training might help cryptologic linguists produce better quality transcripts?  
2.1.2.2h How are transcripts quality controlled? |                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                     |
<table>
<thead>
<tr>
<th><strong>Translation style and accuracy</strong></th>
<th>2.1.2.3 What guidance is given to cryptologic linguists in relation to the style and accuracy required of transcripts?</th>
<th>1C. To identify problematic areas of transcripts, the frequency of occurrence, and potential causal factors.</th>
<th>Recap the key points raised by the interviewee.</th>
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<tbody>
<tr>
<td>2.1.2.3a Do you think transcripts are produced in natural everyday English or are they translated in a particular style for national security purposes?</td>
<td>1H. To determine how the working environment may or may not impact on the translation process.</td>
<td></td>
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<tr>
<td>2.1.2.3b In what ways would you say that transcripts from LOTE might differ from transcripts produced for any other purpose other than for national security purposes?</td>
<td>1I. To determine whether or not a unique genre of language is used in transcripts.</td>
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<td>2.1.2.3c How frequently are linguists asked to change the style they’ve used when producing transcripts?</td>
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<td>2.1.2.3d In relation to transcripts, what problems have you experienced with the way information has been translated?</td>
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<td>2.1.2.3e What particular linguistic aspects of transcripts, if any, have you found to be problematic? How are they resolved?</td>
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<td>2.1.2.3f How is the conflict between literal accuracy and the conveyance of sense managed when producing transcripts for strategic purposes?</td>
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<td>2.1.2.3g What issues arise when lexical accuracy is compromised for the conveyance of overall sense?</td>
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<tr>
<td>2.1.2.3h What difficulties have you noted that linguists experience when asked to translate coded speech?</td>
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<tr>
<td><strong>Intelligence support</strong></td>
<td>2.1.2.3i When jargon and/or code words are intercepted, what instructions are given to cryptologic linguists in relation to how they appear in the transcript?</td>
<td>2.1.2.3j Do you see it as an advantage or disadvantage to brief cryptologic linguists on the meaning of jargon/code words?</td>
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<tr>
<td>2.1.2.4 To what level do linguists have access to available intelligence relevant to their task?</td>
<td>2.1.2.4a What type of background information or intelligence briefings are provided to cryptologic linguists?</td>
<td>1G. To determine the level of background information and intelligence support provided to interpreters/ translators.</td>
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<tr>
<td></td>
<td>2.1.2.4b What types of risks do you think are associated with providing linguists with all available intelligence data?</td>
<td>Recap the key points raised by the interviewee.</td>
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<tr>
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<td>2.1.2.4c What security vetting procedures, if any, are in place for cryptologic linguists?</td>
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<td></td>
<td>2.1.2.4d Are linguists tasked to provide tactical support to operations given increased access to intelligence data compared with those linguists tasked to produce transcripts for strategic purposes?</td>
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<tr>
<td></td>
<td>2.1.2.4e To what extent do you think that analysis training and increased intelligence support to cryptologic linguists might improve the quality of transcripts and the provision of operational support?</td>
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<tr>
<td>Working environment</td>
<td>2.1.2.5 In what ways do you think the operational environment might influence the way transcripts are translated?</td>
<td>2.1.2.5a To what degree do you think that transcripts might reflect the context in which cryptologic linguists work? 2.1.2.5b When cryptologic linguists have monitored a target of interest for some time, do you find that their ability to produce objective translations is affected by having had in-depth knowledge of the target? How might their translations be affected? 2.1.2.5c What instructions are given to linguists in relation to assigning meaning to reference words within the context of the intercepted conversation?</td>
<td>1H. To determine how the working environment may or may not impact on the translation process.</td>
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<tr>
<td>Additional information</td>
<td>2.1.2.6 This interview aimed to identify how translated transcripts are produced for operational/strategic purposes. Is there any further information you feel is relevant that you would like to discuss?</td>
<td>2.1.2.6a Are you content with the way in which this interview was conducted?</td>
<td>1J. To elicit any additional information the interviewee feels may be relevant and to draw the interview to a close.</td>
</tr>
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</table>
Glossary of Terms

Accuracy
This study evaluates translated transcripts used for evidentiary purposes in drug-related trials. The term ‘accuracy’ relating to translated transcripts is used broadly by the courts, translators and interpreters, and often takes on variations of meaning depending on the context within which it is used. How courts and key stakeholders use and understand the term within the context of this enquiry is an important yet debated part of the legal process, therefore, the term is discussed in this thesis but not defined.

Capability
‘Capability’ in relation to Australia’s approach to national security is described in the Guide to Australia’s National Security Capability as:

Capability is what enables the Australian Government and its intelligence, law enforcement, border security, defence, diplomatic, development and emergency management agencies to achieve national security objectives. (Commonwealth of Australia 2013, p. 6).

Discussing the nationwide capability required to combat serious and organised crime, Connery describes ‘capability’ as an element which ‘gives an organisation the potential to achieve its mission,’ the development of which is an ‘active process’ (2013, p. 7). This research shows that development of Australia’s language capability upon which law enforcement agencies rely has been neglected, resulting in a reduced potential to combat serious and organised crime. This study is limited to researching the language capability upon which law enforcement agencies rely and does not seek to identify deficiencies in language capability within the military sector.

Court transcripts
‘Court transcripts’ are the record of the events of trials heard and published by the relevant government recording service located in the jurisdiction within which the associated trial took place. The term ‘translated transcripts’ used in this thesis refers to transcripts written in English having been transcribed from recorded audio conversations in LOTE. These recorded conversations were obtained through telephone interception or listening devices and were used for evidentiary purposes.
Cryptologic linguist

Military translators/interpreters trained to transcribe communications from LOTE and to translate code words and jargon from communications intelligence activities are referred to as ‘cryptologic linguists’ or CTL (the acronym is used for both singular and plural forms). The US, UK and Australian defence forces also use this term in a military context. The term cryptologic linguist is not used by law enforcement agencies in Australia. However, the ACC refers to community interpreters/translators as ‘linguists’ when employed to transcribe intercepted conversations in LOTE from telephone calls and/or listening devices. Australian police services/forces do not refer to community interpreters/translators engaged to transcribe audio recordings in LOTE as anything other than either ‘translators’ and/or ‘interpreters’. This points to a critical omission in the translation process within the law enforcement sector, where transcription is less rigorous and thus prone to increased likelihood of error.

Cryptologic supervisor

The term ‘cryptologic supervisor’ or CTS (the acronym is used for both singular and plural forms) is used in this thesis to refer to military personnel employed in a supervisory role of cryptologic linguists and other communications intelligence-related activities.

Equivalence

While ‘equivalence’ in translation is discussed in this thesis it is not defined. The concept of equivalence in translation and whether it is achievable is debated between translation theorists thereby forming an important discussion point (Section 2.3.2).

Language capability and language capacity

The terms ‘language capability’ and ‘language capacity’ are used interchangeably for the purposes of this thesis and refer to the sum of Australia’s human resources available to communicate to and from LOTE. Brecht and Rivers describe a nation state’s language capacity to be one which ‘represents the ability of the nation (or other polity) to produce the supply of linguistic competence to meet demand’ (2005, p. 82).

322
Literal translation/literal approaches

The term ‘literal translation’ as it is used in this thesis means word-for-word translation. The term ‘literal approaches’ to translation refers to semantic approaches to translation where the translated text conforms closely to the source text surface structure, but may not necessarily replicate the syntactic structure of the source text (Section 2.3.2).

National security

A definition for national security continues to be contested in national security studies (Collins 2007, p. 2). For the purposes of this thesis, ‘national security’ is defined, as it appears in the National Security Statement, as being:

Freedom from attack or the threat of attack; the maintenance of our territorial integrity; the maintenance of our political sovereignty; the preservation of our hard won freedoms; and the maintenance of our fundamental capacity to advance economic prosperity for all Australians (Rudd 2008, p. 3).

The term national security is therefore broadly defined to encompass individual and societal security interests (Babbage 2012).

Objectiveness

‘Objectiveness’ in translation, for the purposes of this study, refers to ability of the translator to produce an impartial translation without bias or influence from external factors. It is this researcher’s perspective that translation is subjective; however, notions of objectivity are well established within the translation and interpreting profession and the term is used during the conduct of this research as it is defined here.

Pragmatic approaches

‘Pragmatic approaches’ refers to those approaches to translation designed to convey meaning to fulfil communicative objectives in the target text for a given purpose.

Serious and organised crime

The term ‘serious and organised crime’ used in this thesis is defined by the Australian Crime Commission Act 2002. Serious and organised crime is defined as:

crimes involving two or more offenders, substantial planning and organisation, sophisticated methods and techniques and crimes that are generally committed in conjunction with other, similar crimes. It includes a range of ‘serious
offences’ listed under the *Proceeds of Crime Act 2002*, including money laundering, illicit drug offences, fraud, cybercrime and firearms offences.

**Transcription**

Transcription is a specialised skill. The task of ‘transcription’ as the term is used in this thesis, is the process of hearing utterances in spoken LOTE and translating them directly into written English. The term may also be used to describe a less direct path of the transcription process, which involves the hearing of utterances in LOTE, transcribing them into written LOTE, and then translating those utterances into written English. The latter method, although arguably a more reliable method according to Fishman (2006), was reported by participants in this study to be rarely used by nationally accredited community interpreters and translators engaged by law enforcement agencies.

Community translators and interpreters engaged by law enforcement agencies to perform transcription tasks are referred to in this thesis as law enforcement interpreter/translators or LET (the acronym is used for both singular and plural forms). LET may be engaged by law enforcement agencies as either permanent staff or under contractual arrangements.

Australian nationally accredited community interpreters and translators are frequently engaged by law enforcement agencies as contractors to perform transcription related tasks for evidentiary and operational purposes. NAATI awards accreditation at the para-professional and professional levels in interpreting and translation; however, the two disciplines are defined as distinctly different qualifications within the translation and interpreting industry.

**Translation and interpreting**

‘Translation’ is defined in this thesis as the practice of communicating from one language to another in written text. ‘Interpreting’ is defined as communicating from one language to another in verbal form.

Even though NAATI accredited interpreters and/or translators are engaged by law enforcement agencies to perform transcription tasks, the acronym LET is used in this thesis to refer to those people who perform transcription skills regardless of whether
they are accredited as an interpreter or a translator by NAATI. The reasoning applied to using this acronym is for the purposes of simplicity. It is also based on Australian government recognition that preparation of translated transcripts is a translation skill as reflected in a unit of competency: that is PSPTIS609A Prepare Translated Transcripts (DEEWR 2012, p. 2). This research acknowledges that the task of transcription is a specialised skill that shares common skills across the translation and interpreting disciplines; the US National Association of Judiciary Interpreters and Translators (NAJIT) also holds this view (NAJIT 2009, p. 1).