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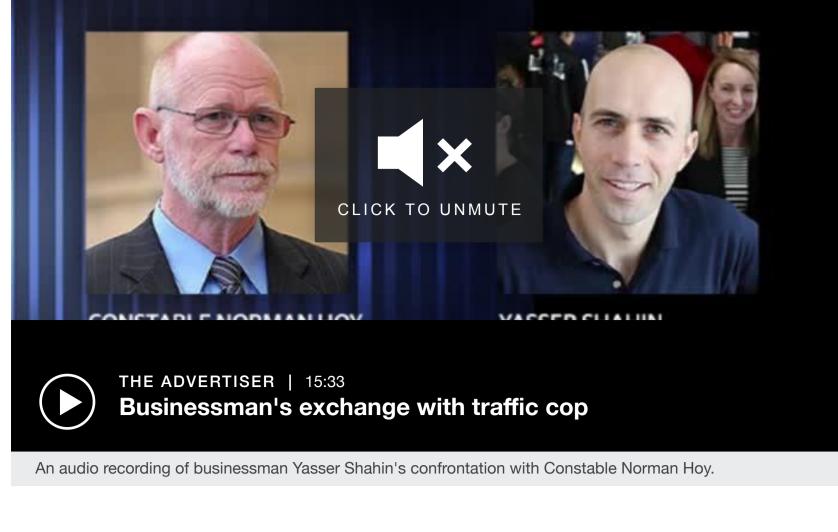
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Police union wants \$200k to cover cost of defending Constable Norman Hoy in Yasser Shahin case

POLICEMAN Norman Hoy was wrongly charged with assaulting petrol-station baron Yasser Shahin after prosecution policy was incorrectly applied, one of Australia's foremost prosecutors says. Nigel Hunt

May 7, 2015 - 12:09AM **The Advertiser**



• Constable files injunction against publishing verdict revelations

cost of his defence.

Public Prosecutions.

he had made.

part of his adjudication process.

POLICEMAN Norman Hoy was wrongly charged with assaulting petrol-station baron Yasser Shahin after

Constable found not guilty of assaulting petrol baron Report found constable was rude and harsh to drivers

prosecution policy was incorrectly applied, one of Australia's foremost prosecutors says.

The police union now wants the Government to cover the

In response to a damning legal opinion provided to it by barrister Nicholas Cowdery, QC, the police union wants the State Government to refund the \$200,000 it spent funding Senior Constable Hoy's four-year legal battle

against a charge brought by the Office of the Director of

It has also asked for an independent review of the DPP prosecution policy to ensure it is being correctly applied, and a review of the prosecution of Constable Hoy.

In his legal opinion, Mr Cowdery slams the adjudication

process adopted by DPP Adam Kimber, QC, that resulted

assault of Mr Shahin and then the ultimately doomed

The majority of Mr Cowdery's opinion was last night

in Constable Hoy firstly being charged with the aggravated

prosecution of the career traffic officer. He states DPP prosecution policy was breached in two crucial areas — the reasonable prospects of conviction test and the public interest test.

rejected by Mr Kimber, who said he stood by the decisions

Mr Cowdery, who was DPP in NSW from 1994 to 2011 and is now recognised as one of Australia's foremost authorities on prosecution practices, is also critical of Mr Kimber's decision to use Constable Hoy's entire internal police disciplinary record, containing 10 complaints, as

Mr Cowdery says this was "not appropriate" and eight of

relevant", and should not have been used as part of the

the 10 complaints were unsubstantiated and "not

process. The two that were substantiated he classed as "very moderate" cases that resulted in counselling and in only one case were there "relevant" matters that should have been considered.

Judge Rice said it "was not in the public interest to pursue this matter in court" and his view was that a "proper

assessment" of the evidence before trial would have shown

His forthright comments follow those of District Court

Hoy not guilty of the aggravated assault of Mr Shahin

during a routine traffic stop over the tinting of the

windows of his Rolls Royce.

it could not have succeeded.

to charge him with assault.

urging," he said.

Judge Paul Rice in January, after a jury found Constable

enough evidence against Constable Hoy to prosecute him Kimber. Mr Cowdery's legal opinion was commissioned by the

opinion had reinforced the union's view "that Constable Hoy should never have been criminally prosecuted". "We urged Mr Kimber in 2012 to use the powers available

evidence prior to the trial would have shown that it was not in the public interest to pursue the matter. Earlier image of Yasser Shahin outside the District Court.

prospect of conviction test and the public interest test, it would have resulted in the discontinuation of criminal proceedings. This matter has undermined police confidence in Mr Kimber and his office and impacts on police morale."

of numerous complaints by members of the public. Constable Hoy obtained a temporary injunction preventing the story being published, but this was withdrawn after it was established the information had been obtained from a

In a media release issued on February 4, Mr Kimber said

the fact there had been previous complaints against a

police officer meant a criminal charge "might be

is in the public interest," Mr Kimber stated.

appropriate".

Just days after Constable Hoy was found not guilty in

"The two complaints that did are all that can relevantly be taken into consideration. It is not complaints per se that

are material (any disaffected individual may complain

consequences that are relevant.

against a police officer, with or without a proper basis) —

it is complaints that are substantiated and the disciplinary

Mr Cowdery states an analogy may be drawn with a criminal's previous convictions in that for sentencing purposes only, allegations that have been substantiated and resulted in orders can be taken into account.

agrees with my view that a police officer's disciplinary record is a relevant consideration in deciding whether or not a criminal charge is appropriate".

approach to the law and view of the opinion I reached. I

"I note that Mr Cowdery's advice makes plain that he did

"As to the balance of the advice, I disagree with his

stand by my earlier public statement.

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me in coming to my decision". The state'; s most senior legal officer, Attorney-General John Rau, said he had not yet examined Mr Cowdery's opinion and so could not yet comment.

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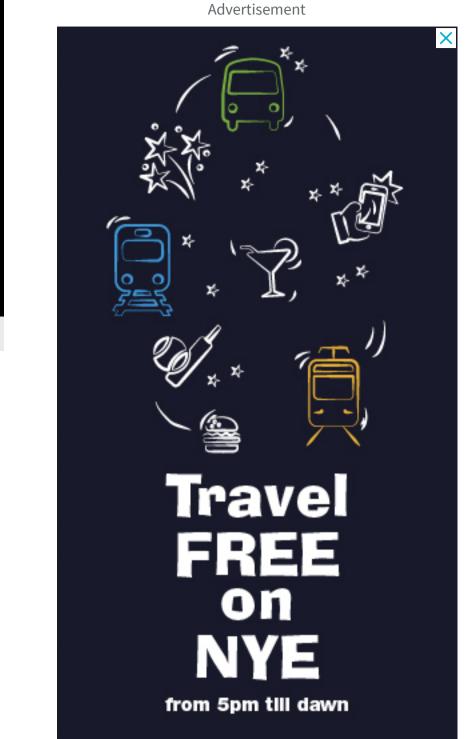
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A fortnight ago Police Commissioner Gary Burns also revealed that police had also warned there was not criminally, but this advice had been overruled by Mr

Police Association after Mr Kimber revealed in a media

statement, following Constable Hoy's acquittal, that he

had used Hoy's disciplinary record as part of his decision

Association president Mark Carroll said Mr Cowdery's to him to terminate the prosecution. He rejected our

"Presiding Judge Paul Rice said that the trial wasted two

weeks of court time because it had no reasonable prospect

of conviction. He also said that a proper assessment of the

"Now prominent QC Nicholas Cowdery has advised that if there had been proper application of both the reasonable

January, The Advertiser revealed he had been the subject Police Complaints Authority report provided to one complainant.

However, in his opinion, Mr Cowdery states: "Again, with respect, I disagree." "Complaints that did not result in disciplinary outcomes must be disregarded for these purposes," he states.

"It is a consideration relevant to whether a criminal charge

"Allegations that were dropped, or resulted in acquittals, may not," he states.

"It follows, therefore, in my view, that even if the

applied (and I do not agree that it was), a proper

reasonable prospects of conviction test was properly

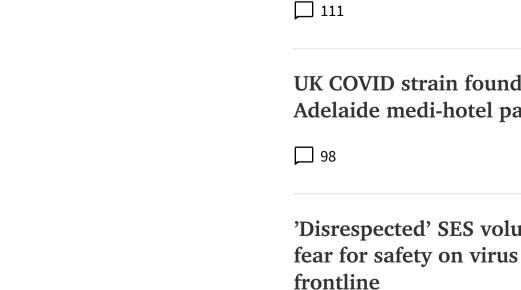
of disciplinary action." Mr Kimber last night said he noted "that Mr Cowdery

application of the public interest test would have seen the

criminal proceedings against Hoy discontinued in favour

not have access to all of the material that was available to

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