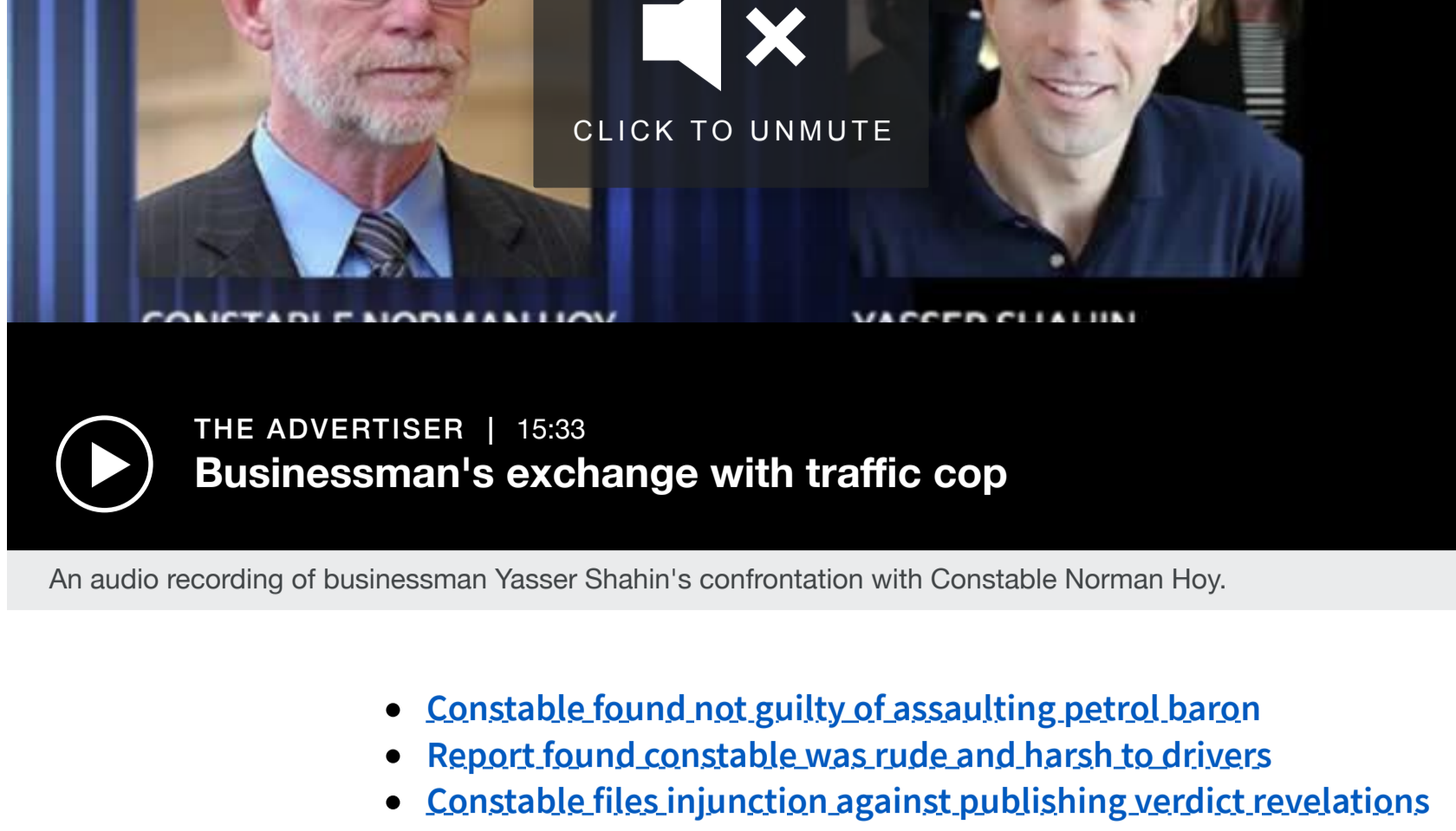




Police union wants \$200k to cover cost of defending Constable Norman Hoy in Yasser Shahin case

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
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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.

The police union now wants the Government to cover the cost of his defence.

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 Public Prosecutions.

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 in Constable Hoy firstly being charged with the aggravated assault of Mr Shahin and then the ultimately doomed 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.

The majority of Mr Cowdery's opinion was last night rejected by Mr Kimber, who said he stood by the decisions he had made.

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 part of his adjudication process.

Mr Cowdery says this was "not appropriate" and eight of the 10 complaints were unsubstantiated and "not relevant", and should not have been used as part of the 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.

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

"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 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.

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

Just days after Constable Hoy was found not guilty in January, *The Advertiser* revealed he had been the subject 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 Police Complaints Authority report provided to one complainant.

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 appropriate".

"It is a consideration relevant to whether a criminal charge is in the public interest," Mr Kimber stated.

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.

"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 against a police officer, with or without a proper basis) — it is complaints that are substantiated and the disciplinary consequences that are relevant.

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.

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

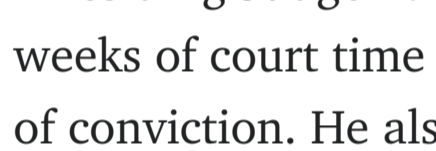
"It follows, therefore, in my view, that even if the reasonable prospects of conviction test was properly applied (and I do not agree that it was), a proper application of the public interest test would have seen the criminal proceedings against Hoy discontinued in favour of disciplinary action."

Mr Kimber last night said he noted "that Mr Cowdery 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".

"As to the balance of the advice, I disagree with his approach to the law and view of the opinion I reached. I stand by my earlier public statement.

"I note that Mr Cowdery's advice makes plain that he did not have access to all of the material that was available to 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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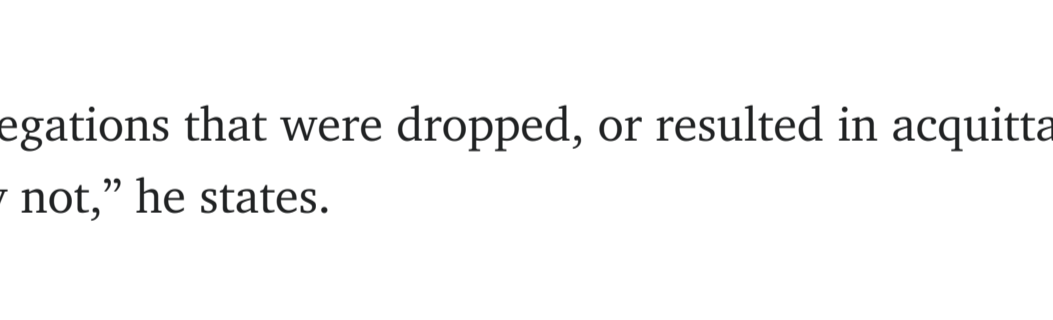
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