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Australian War Memorial tells volunteers they can lose role if they speak publicly about redevelopment

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Elliot Williams

The Australian War Memorial has sent an email to volunteers warning them they face losing their position if they make public comment on its \$500 million expansion.

The massive redevelopment [has attracted criticism](#), due mainly to its price tag, which some claim could be better spent on veterans welfare, and [heritage concerns](#).

The memorial has defended the project saying it will [provide greater capacity to tell the stories of modern conflicts](#) and current servicemen and women.

The memorial has now said to its volunteers they should not engage in public commentary on the project, a move that is unclear whether it has the lawful authority to make.

One volunteer, who wished to remain anonymous due to the memorial's warning, said the email left him feeling the memorial would target anyone it suspected of voicing an opinion publicly.

A longtime volunteer, he said the memorial had never before taken steps to limit public opinion among volunteers and that most volunteers held strong beliefs about the redevelopment project.

"That sign on the side of the road when you drive in, that we are young and free, becomes meaningless," he said.

"That's a lie."

The email sent from a war memorial staff member to a volunteers mailing list acknowledges the controversy surrounding the project and includes a reminder that "we are all public servants".

"This is a timely reminder that as memorial volunteers you should not publicly comment on the development," the email reads.

"This includes not providing comment on radio via talkback shows, commenting in the newspaper such as in the Letters to the Editor section, or commenting on a link or discussion on such social media as Facebook or Twitter. This includes not clicking 'Like' to someone else's comment."

The email goes on to remind volunteers they signed an agreement which obliges them to uphold the values of the APS Code of Conduct and to not comment to the media unless authorised.

"Public servants, including volunteers are all bound by these, and can lose our job if we are found to have breached them. This also means you can lose your volunteer role at the memorial," it reads.

A war memorial spokesperson confirmed the memorial's stance.

"All staff and volunteers of the Australian War Memorial are required to adhere to Australian Public Service Values and Code of Conduct," the spokesperson said.

However, visiting fellow at the ANU's Centre for International and Public Law Kieran Pender questioned whether the memorial was able to lawfully bind volunteers to this agreement.

"Volunteer agreements by their inherent nature have no contractual effect, so the memorial cannot bind its volunteers to obligations in the APS Code of Conduct," Mr Pender said.

"While a non-government employer has the ability to cease engagement with volunteers without cause, subject to anti-discrimination law, the government's actions are fundamentally constrained by the Constitution."

Beyond that, Mr Pender said the memorial's actions were a deeply concerning attack on public discourse.

"If, in response to a volunteer engaging in public comment, the memorial ceased their engagement, I think there would be a strong argument this would be contrary to the implied freedom of political communication, and therefore unlawful," he said.

"Even if the memorial does not actively cease engaging volunteers due to their comments, the directive has a real chilling effect on public discourse."

Employment law expert at Maurice Blackburn Josh Bornstein said he had never heard of any case or any proposal to limit the free speech of volunteers.

But he said this came after a noticeable increase in the regulation of employees' out-of-hours activities in both the private and public sector.

"Australian public servants operate under severe restrictions on their speech and have done for a very long time," Mr Bornstein said.

"The sensitivity of a government to criticism often flows down through the public sector and into attempts to restrict and regulate public servants' speech.

"If an issue is more politically sensitive there will be more strenuous attempts to silence public servants."

Mr Pender added that while the recent High Court decision of *Banerji* had legitimised the government's desire for an apolitical public service, this was not unlimited.

"In the context of volunteers engaging respectfully in a matter of ongoing local discussion, I think it is extremely doubtful that *Banerji* supports the memorial's approach," Mr Pender said.