

Our Ref: .450034
Your Ref:

24 May 2024

By Email: admin@acmasa.com.au

Private & Confidential

Australian Chinese Medical Association (South Australia) Inc
PO Box 638
North Adelaide
South Australia 5006

Attention: Dr Sheldon Chong, President

Dear Dr Chong

The ACMA Foundation

1. We act for The ACMA Foundation ABN 97 628 146 847 (**Foundation**).
2. We write concerning the statement published on the website of the Australian Chinese Medical Association (South Australia) Incorporated (**ACMA**) titled 'ACMA Foundation – The Fact Sheet' (**Statement**).
3. A copy of the Statement extracted from the ACMA website on 21 May 2024 is included in the Annexure to this letter.
4. Our client is concerned about the nature and content of the Statement, in particular, in our client's view, it has the potential to be read in a pejorative way and undermine the legitimacy of the Foundation and damage its reputation and impugn the character of the trustees.
5. The purpose of this letter is to put you on notice of our client's concerns and respond to inaccuracies raised in the Statement. Our client requests that the Statement be taken down from the ACMA website.
6. We outline below our client's concerns with the Statement

Paragraph 1

7. Paragraph 1 of the Statement includes the following assertion:

"Most of the funds raised by ACMA were deposited into the account of the Foundation."

8. This statement implies that the Foundation (and thereby the trustees) have been passive in their fundraising efforts and deferred fundraising activities to ACMA.
9. While our client recognises the strong historical associations with ACMA and ACMA's fundraising initiatives over the years, our client wishes to point out that the trustees have been proactive in

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independently raising funds for the Foundation and providing for the management of the corpus of the Foundation and do not rely on ACMA's contributions for its operations.

Paragraph 2

10. Paragraph 2 of the Statement says in part:

*“Dr Francis Ghan joined the Foundation as a trustee on 19 January 2008 and later became Chairman. Since then, the number of trustees **has been reduced**. By 16 May 2021, the number of trustees **has been reduced** down to two with Dr Francis Ghan remaining as the Chairman and Dr Lap Kwong Han as the Treasurer.”* (Emphasis added).

11. The reference to the number of trustees of the Foundation having “*been reduced*” implies that Dr Ghan was the reason for the reduction in number of trustees when he took the role of chairman, namely that it was by some act of his as chairman.

12. That implication is incorrect. We are instructed that the reason the number of trustees reduced was because of the voluntary resignations of Dr Chin Hian Lim and Dr Evelyn Yap, not because of Dr. Ghan's appointment as chairman or some act of removal at his instigation. Dr Chin Hian Lim and Dr Evelyn Yap have not on our instructions provided reasons for their resignations, and their resignations were entirely voluntary.

13. Further, on our instructions, on 16 February 2021 the ACMA committee severed cooperation with the Foundation on the basis that its ultimatum that Dr Ghan relinquish the chair of the Foundation was not complied with. ACMA has no authority, then or now, to make such demands, impose ultimatums or influence the composition of the trustees of the Foundation.

Paragraph 3

14. Paragraph 3 of the Statement says in part :

“By 22 September 2021, Dr Francis Ghan and Dr Lap Kwong Han decided to resign from ACMA as members”.

15. That statement is correct. But what on our instructions it fails to recognise is that on 21 September 2021, Mr Gordon Cheng, the legal adviser to ACMA, contacted Dr Ghan and urged him to resign as an ACMA member or face the humiliation of being called to account to a meeting of the ACMA committee of management over allegations of an unknown and unsubstantiated nature. Rather than face this humiliation at the hands of the ACMA committee of management, Dr Ghan chose to tender his resignation as a member. We are instructed that Dr Han resigned in similar circumstances on the same day.

16. Paragraph 3 of the Statement goes on to state that “*[a]ll the funds raised in the past 26 years with the assistance of ACMA remains (sic) with the Foundation and continued (sic) to be solely and exclusively managed by Dr Francis Ghan and Dr Lap Kwong Han.*”

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17. The use of “*solely and exclusively*” has a pejorative inference. It is true that Dr Ghan and Dr Han control the funds of the Foundation, that is because they are the trustees of the Foundation and the deed establishing the Foundation expressly provides that the trustees shall stand possessed of, and manage, the funds of the trust. It is not for the trustees to fetter their discretions by deferring to ACMA or any other party.
18. If ACMA alleges that there has been impropriety in the sole and exclusive management of the funds of the Foundation, then we invite you to particularise those allegations in detail.

Paragraph 4

19. Paragraph 4 correctly states that “[a]s the Foundation is a separate legal entity, ACMA has no jurisdiction whatsoever to influence the governance of the funds.”
20. It is not clear why ACMA includes this sentence in the Statement. Does ACMA consider that it *should* have some power or “jurisdiction” to influence the Foundation? For the reasons noted above, the trustees of the Foundation are bound to adhere to their legal responsibilities and duties as trustees. It is not for ACMA to influence the Foundation and, again, the inclusion of the words referred to has an unwelcome pejorative inference.

Paragraph 5

21. Paragraph 5 of the Statement says:

“Efforts made by the Management Committee of ACMA with intention to communicate with Dr Francis Ghan regarding resumption of a working relationship with the Foundation have not been successful”.
22. The implication in this statement is that it is Dr Ghan who has rebuffed ACMA’s efforts of communication. We are instructed this is not the case. Our client wishes to point out that three separate meetings with ACMA to resume a working relationship have failed because ACMA demanded that the Foundation be restructured and amend its constitution. The Foundation declined to accede to ACMA’s unilaterally imposed demands. The structure and constitution of the Foundation are independent of ACMA and therefore, ACMA’s demands were unfounded and beyond its authority.

Paragraph 6

23. The final paragraph of the Statement says:

“Therefore, members are advised that ACMA has no jurisdiction or power to influence the Foundation regarding how the existing funds will be utilised. The Foundation has no obligation to inform ACMA how the funds will be distributed.”
24. While our client agrees with ACMA’s assertion that it has no jurisdiction or authority over the Foundation and its distribution of funds, the paragraph implies that ACMA has some reservations about the Foundation’s administration and without its oversight the

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Foundation is in jeopardy or the trustees may act recklessly. This implication is not only incorrect but also damaging to the integrity of the trustees.

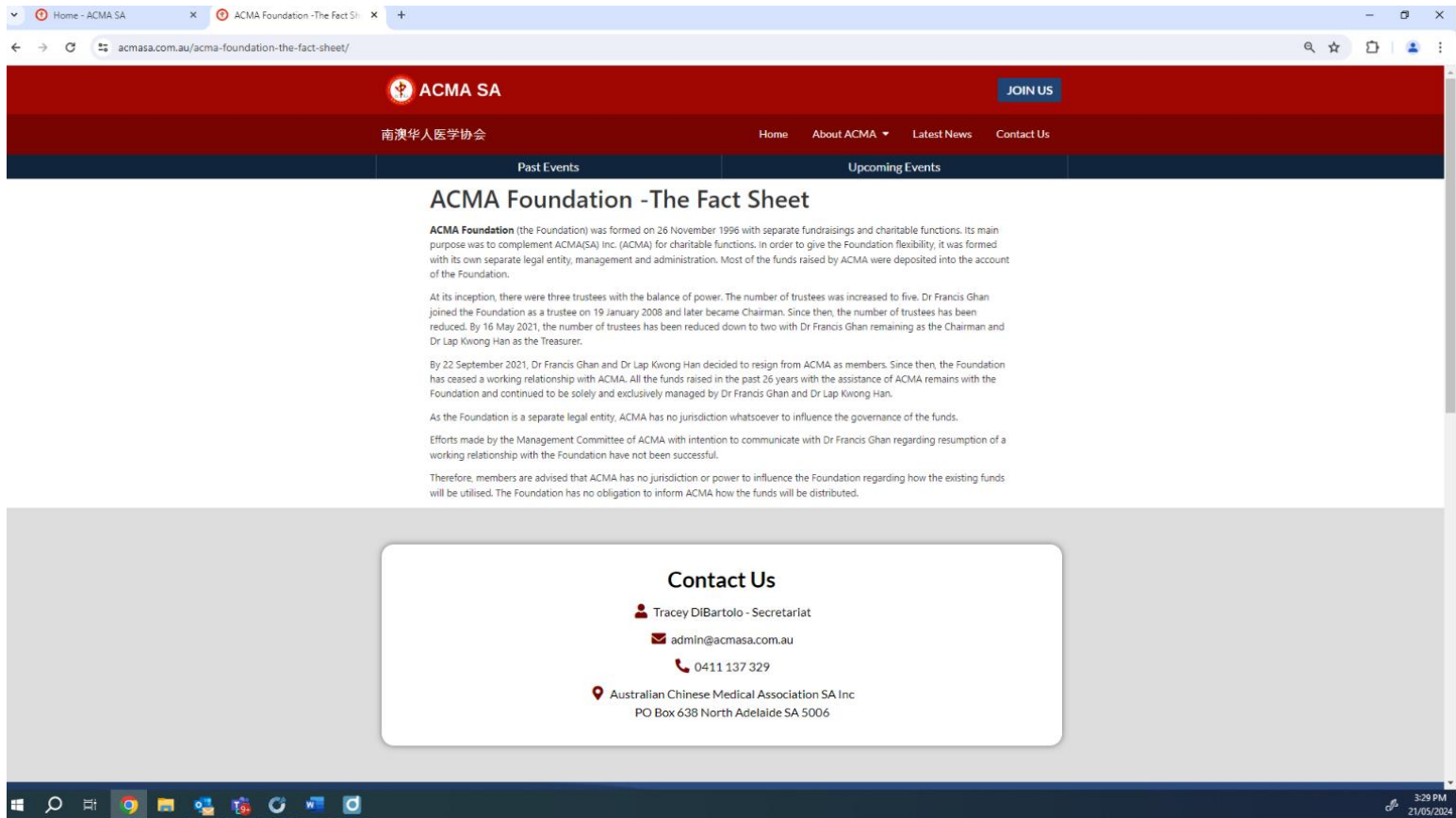
25. If ACMA considers that it should have some overriding authority to dictate to the trustees how the Foundation should be governed or administered then we invite you to particularise the basis for such a position, otherwise, ACMA's complaint that such a circumstance exists is nothing more than a statement of the true legal position.
26. The Foundation is a registered charitable body with the Australian Charities and Not-For-Profits Commission (**ACNC**) and must comply with stringent reporting obligations and standards, including the submission of annual financial statements.
27. The Foundation's financial statements are independently audited, up to date and available on the ACNC's website for public viewing. Any reader of those statements will see that the Foundation has been active in carrying out its work, including making distributions to applicable charities. Any implication in the Statement that the trustees of our client are acting improperly is categorically rejected.
28. Given the many deficiencies in the Statement, including that, by omission of material facts, it presents a one-sided and potentially damaging record of the Foundation's state of affairs, our client requires its immediate removal from the ACMA website.
29. Additionally, our client requires that the Statement be replaced with an open apology letter directed to the Foundation and, in particular, the named trustees. The statement of apology should also be sent to members of ACMA by its committee of management.
30. Our client reserves all of its rights.

Yours faithfully
Piper Alderman

Per: 

Simon Venus
Partner

Annexure



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ACMA Foundation -The Fact Sheet

ACMA Foundation (the Foundation) was formed on 26 November 1996 with separate fundraisings and charitable functions. Its main purpose was to complement ACMA(SA) Inc. (ACMA) for charitable functions. In order to give the Foundation flexibility, it was formed with its own separate legal entity, management and administration. Most of the funds raised by ACMA were deposited into the account of the Foundation.

At its inception, there were three trustees with the balance of power. The number of trustees was increased to five. Dr Francis Ghan joined the Foundation as a trustee on 19 January 2008 and later became Chairman. Since then, the number of trustees has been reduced. By 16 May 2021, the number of trustees has been reduced down to two with Dr Francis Ghan remaining as the Chairman and Dr Lap Kwong Han as the Treasurer.

By 22 September 2021, Dr Francis Ghan and Dr Lap Kwong Han decided to resign from ACMA as members. Since then, the Foundation has ceased a working relationship with ACMA. All the funds raised in the past 26 years with the assistance of ACMA remains with the Foundation and continued to be solely and exclusively managed by Dr Francis Ghan and Dr Lap Kwong Han.

As the Foundation is a separate legal entity, ACMA has no jurisdiction whatsoever to influence the governance of the funds.

Efforts made by the Management Committee of ACMA with intention to communicate with Dr Francis Ghan regarding resumption of a working relationship with the Foundation have not been successful.

Therefore, members are advised that ACMA has no jurisdiction or power to influence the Foundation regarding how the existing funds will be utilised. The Foundation has no obligation to inform ACMA how the funds will be distributed.