

# From AKWF to KWA

## Summary

### Historical background

The sport of Wushu (often called Kung Fu) has been practised in Australia for a long time (some claims, from 1850s) but the first officially registered organisations seem to start appearing only in 1970s. The majority of them were created for commercial purposes, i.e. teaching, coaching, training etc. However, one particular chain of non-profit organisations that shared their leaders and their vision, stated their primary purpose (with slight variations) as ***“to act as the Official Peak Industry Body for Kung Fu/Wushu in Australia and to represent and advise on Kung Fu/Wu Shu to all local, State and Federal Government Departments as may be required.”*** (Constitution of Australian Kung Fu (Wu Shu) Federation Inc., 2007)

The first organisation in this chain was ***The Australian Kung Fu Federation Ltd*** registered with ASIC in 1983 as a public company limited by guarantee. In January 1985 it changed its name to ***The New South Wales Kung Fu Federation Ltd***, in May 1985 changed its name again to ***Pacific Kung Fu Federation Ltd*** and in December 1986 changed the name once more to ***The Federation of Australian Kung Fu and Wu Shu Organisations Ltd*** (FAKO). In 1991, FAKO was recognised by the Australian Sports Commission (ASC)<sup>1</sup> as a National Sporting Organisation (NSO) for Kung Fu / Wushu. For some reason, the ASC “did not notice”<sup>2</sup> deregistration of FAKO by ASIC in 1994 and registration of another FAKO (***The Federation of Australia Kung Fu & Wu Shu Organisations Limited***) in 1998 which assumed the status of NSO. In 1998, the new FAKO changed its name to ***Australian Kung Fu (Wu Shu) Federation Limited*** (AKWF).

In 1998, two new companies were registered on the same day: ***Australian National Kung Fu Federation Limited*** and ***Federation of Australian Kung Fu & Wu-Shu Organisations – Kung Fu (Wu Shu) Australia Limited***. Both had the same office and the boards of directors roughly identical to that of AKWF. The twins were deregistered by ASIC in 2005 leaving no traces of their business activity.

In 2004, AKWF Limited was officially transformed into AKWF Inc, a NSW-based incorporated association. This did not affect the AKWF’s status as an NSO which continued till 2012 when the status of NSO was “effectively transferred” to a new entity – ***Kung Fu Wushu Australia Limited*** (KWA) registered in 2010 as a company limited by guarantee by lodging Form 201 (Application for registration as an Australian company). The transfer caused significant confusion among Australian Wushu community as to the identity of the NSO for Wushu. As a matter of fact, this confusion still continues. For example, The Golden Lion Academy, a well-known and respected organisation based in Melbourne, considers itself ***“a long standing member of ... Kung Fu Wu Shu Australia (formerly AKWF, the Australian Kung-Fu Wu-Shu Federation)”*** (<http://www.goldenlion.com.au/kung-fu/history-kung-fu/golden-lion/>) implying that KWA is simply a new name of the AKWF. Another example is Tai Chi Association of Australia (TCAA) newsletter of March 2014 where the president stated that ***“For this year at least, TCAA shall be supporting the AKWF (Kungfu Wushu Australia, KWA) as far as competitions go”***.

In 2015, following numerous enquiries, Wushu Council Australia lodged a freedom of information (FOI) request with the ASC. The purpose of the request was to access documents that could clarify how the status of the NSO for the sport of Wushu was transferred from AKWF to KWA, a separate legal entity. In 2018, the access to the documents was eventually granted by the decision of the Administrative Appeals Tribunal in Canberra (<http://wushu-council.com.au/2018/02/kung-fu-x-files/>). The following is the summary of the released documents (with comments) in the context of NSO status transfer.

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<sup>1</sup> The Australian Sports Commission is a statutory authority established in 1984 to provide services, resources and leadership in the development of sport in Australia.

<sup>2</sup> In 1995, the ASC issued statement that it recognised FAKO as “the bona fide national sporting organisation representing Kung Fu (Wu Shu) in Australia”.

## Transforming an Incorporated Association into a Company Limited by Guarantee

Starting from around 2009, the ASC encouraged national sporting organisations to adopt a company limited by guarantee organisational structure. A number of NSOs that previously were incorporated associations had to transform themselves into companies limited by guarantee. The process is well-documented and aimed at full preservation of the identity of an organisation and its proud history as well as its assets and liabilities. In a typical scenario, an incorporated association should:

1. Resolve at a meeting of the management committee that, subject to members' approval, the association is to be converted to a company limited by guarantee, will adopt a new constitution and change its name.
2. Make sure the new constitution is acceptable by the relevant body (in case of an NSO – Australian Sports Commission).
3. Hold a general meeting where the members vote for a special resolution on changing the business structure and new constitution.
4. Apply to the relevant body for a transfer (in NSW - Office of Fair Trading) and wait for the approval to wind up the association and transfer remaining funds to the new company.
5. Apply to ASIC for registration of a company limited by guarantee by lodging Form 202 (Application for registration of a body corporate as a company).
6. Inform existing partners, customers and relevant bodies about the changes in structure and name.
7. Wind up the association.

The initial step undertaken by the AKWF President was in the right direction. On 26 October 2009, the postal ballots were mailed to the members who were asked to vote on the proposal *"That the Australian Kung Fu Wu Shu Federation Inc. change its incorporation status, by the most appropriate legal means, to that of a public company limited by guarantee"*. Following the (presumably) positive result of voting, a brand-new Company Limited by Guarantee was registered with the ASIC – Kung Fu Wushu Limited (KWA). This was a direct violation of the above-mentioned scenario. The members were informed that they, in fact, *"wished to create a new corporate entity"* and were invited to a Special General Meeting to vote for a Special Resolution *"that the incorporation the Australian Kung Fu (Wushu) Federation Inc. be cancelled."*

Apparently, the idea of AKWF's structure transition from Incorporated Association to a Company Limited by Guarantee was discussed with the ASC in 2009-2010. In 2011, there were intensive consultations of AKWF with the ASC who assisted in the drafting a new constitution. Approximately at the same time, the ASC was assisting another NSO – Boxing Australia – with their transition from an incorporated association to a company limited by guarantee. Boxing Australia undertook the lengthy but transparent and clear process as outlined above and became Boxing Australia Limited.

It is not unreasonable to believe the ASC assumed that the transition of AKWF from incorporated association to a company limited by guarantee would be carried out in the same fashion as Boxing Australia's. In other words, **the ASC appeared to believe that the matter in question was simply changing the name, business structure and constitution of AKWF** which is supported by documents and emails (with no objections on the part of the AKWF).

1. The ASC's position on AKWF/KWA was clearly demonstrated in the correspondence that followed the rejection of the application of *Kung Fu Wushu Western Australia* for State recognition:
  - On 22 November 2011, the AKWF Vice-President wrote to Janice Lo (Project Officer, Sports Planning and Performance, ASC): *"If [redacted] is correct (in that he received such advice from ASC) then someone has unintentionally misled him, since AKWF is the recognised NSO for Chinese Martial Arts (having been granted recognition for the period 2009 - 2013) as it has been for over 25 years<sup>3</sup>. AKWF will not be wound up, until the recognition process for KWA is completed and is functioning fully as the governing body;*

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<sup>3</sup> Australian Kung Fu Wushu Federation Inc (AKWF) as a legal entity exists from 1998.

***when KWA recognition is finalised, we will wind up AKWF - not before; until AKWF is wound up, it is still the recognised NSO."***

- On 23 November 2011, in a letter addressed to Philip Gregson (WA Department of Sports and Recreation), Janice Lo stated: ***"Australian Kung Fu and Wu Shu Federation is changing its name to Kung Fu and Wu Shu Australia and also changing from associated incorporation to company limited. The ASC has been involved in reviewing the new constitution and amendments have been taken up by the organisation. The recognition status of this organisation to be the peak body in Kung Fu has not been affected."***
  - On 8 December 2011, Philip Gregson replied: ***"I interpret this as meaning that the ASC has not yet finalised its dealings with the National Body – is that the case?"***. Janice Lo clarified further: ***"The ASC recognises the Kung Fu and Wu Shu Australia (previous name Australian Kung Fu and Wu Shu Federation) as the peak body of Kung Fu in Australia."*** Apparently, this was not enough for Philip Gregson who withheld the application of Kung Fu Wushu Western Australia for State recognition: ***"The ASC has advised that because of the uncertainty recognition status of the national body Australian Kung Fu and Wu Shu Federation, the application (from a National perspective) has been withheld. This will be reviewed sometime before 2013 according to the ASC."*** The Vice-President of AKWF (who is also one of KWA Directors) was not amused. In his letter to Philip Gregson he expressed his concerns over the situation: ***"As a former Senior Manager in the Australian Public Service, I just cannot see how you could interpret the ASC advice as saying that 'because of the uncertainty recognition status of the national body Australian Kung Fu and Wu Shu Federation, the application (from a National perspective) has been withheld'. ... In view of the potential for your advice to severely undermine what our state affiliate is trying to achieve in WA, I would ask you to reconsider your advice and finalise the recognition process for KWWA as a matter of urgency."***
2. On 8 December 2011, Janice Lo informed AKWF that ***"As for the new Constitution, I have been advised from our Governance specialist, who reviewed the new Constitution, that the new constitution should be approved by all members when they approve the change to the new name/body. Without members approval, your organisation has to operate under the old constitution, which is the one that has been approved by members. Therefore, somehow, sometime, members need to be provided the opportunity to approve the new constitution."*** Later, on 27 March 2012, Janice Lo enquired: ***"Has the new Constitution been approved by the members?"*** response to which was ***"On 26 March 2012, members voted to accept the new constitution"***. It was further clarified that it happened at the Special General Meeting, but the website has not been updated yet ***"to reflect the new name and changes"***.
  3. Despite stating that the term of the recognition of KWA ***"deemed to have commenced on 26 March 2012"***, on 8 May 2012, the ASC issued the document approving the NOAS Level 1 Judge Accreditation Program which was subject to the condition, among others, that ***"Australian Kung Fu/Wushu Federation maintains its status as an ASC recognised National Sporting Organisation."***

## International Wushu Federation Membership

On 6 June 2012, the ASC was informed that "**KWA also needs to re-affiliate with the International Wushu Federation (IWUF) and we need a letter from ASC to provide to IWUF confirming that we are the government-recognised NSO for Chinese Martial Arts.**" The word "re-affiliate" could imply either that KWA was already previously affiliated which is not the case, or that KWA in this context is used as a new name for AKWF which was indeed previously affiliated with IWUF. The letter was immediately issued certifying "**that, at the time of writing, Kung Fu and Wushu Australia is the peak body for the sport of kung fu (wushu) in Australia recognised by the Australian Sports Commission, on behalf of the Australian Government**" and signed by Janice Lo, Project Officer, Sports Development Division. At that time, however, the only recognition agreement was with AKWF. Having procured the letter from the ASC confirming the NSO status prior to its formal recognition, KWA, as a brand-new company, successfully broke the vicious circle between ASC's requirement of IWUF's membership and IWUF's requirement of the Government recognition. It is most likely that the IWUF Secretariat was simply informed of the change of the organisation name. It is evident from the 2013 IWUF Congress Minutes, that the acceptance of a new Australian organisation as an IWUF member, was not even considered. Otherwise, KWA would have to undertake the standard procedure prescribed by the IWUF Constitution for all new members and the membership would have to be approved by the Congress.

## AKWF: Mass Exodus

On 27 December 2012, the AKWF Public Officer contacted Registry of Co-operatives & Associations to render his resignation and declared:

***"Following on from the earlier deaths of two of our members I have received, over the last several days, resignations from the majority of our members, accordingly I must advise you that:***

- i) the association has fewer than 5 members***
- ii) the association cannot establish and maintain a committee***

***as a consequence of this the Association is no longer able to operate."***

He also advised that "***The bank account will no longer operate and such funds that remain will be disposed of when I receive directions from your office regarding this matter.***"

As AKWF is still on the public register of NSW Associations, the NSW Office of Fair Trading was contacted for comments. On 4 September 2017, the Registry Manager advised that "***This Association is not in operation and is currently subject to litigation. There is no current public officer.***"

## Kung Fu Wushu Australia: Fresh Start & No Links with AKWF

On 22 January 2013, following a Freedom of Information request which required consultation with AKWF and KWA, the National Secretary of KWA in his email to Janice Lo pointed out several 'inaccuracies' in her emails of 22-23 November 2011 ***"which refer to the change from the AKWF to the KWA as NSO for Kung Fu/Wushu as a name change... At no time did AKWF 'change its name' to KWA. KWA is a legally separate organisation that was incorporated in January 2010.***

***Unfortunately, it is possible that your emails could be taken out of context in legal matters currently before the Courts, to the detriment of KWA. We therefore ask you to acknowledge that you understand that the two organisations are different. We will ask that the relevant documents not be included in the FOI request, due to the inaccuracies included therein, and the potential for damage to KWA and its members."***

While it was obvious that the KWA is an independent company, it was not obvious that it is "a legally separate" from AKWF. Had AKWF undertaken the standard process of transition from an incorporated association to a company limited by guarantee, the new company, KWA, would have inherited all legal benefits and obligations of AKWF, including its NSO status and wouldn't even need to worry about any previous documents mentioning AKWF such as the legally binding Recognition Agreement between ASC and AKWF being in force from 2009 to 2013. However, since KWA was initially registered as a completely new company, it had to leave behind whatever AKWF had, including its proud and colourful history. The ASC, in its apparent belief that the KWA went through the same process as Boxing Australia, was probably surprised by this new information but could not afford to lose face and admit that the current recognition agreement is with a wrong organisation. Besides, at that time, the ASC announced that all NSOs' recognition status will be automatically extended till 2014 when a new recognition cycle would take place under new regulations. Having already AKWF's recognition "effectively transferred" to KWA, an organisation with ***"no corporate or financial links to any of the previous four national representative organisations"*** ([http://kungfuwushuaustralia.com/who\\_are\\_we.php](http://kungfuwushuaustralia.com/who_are_we.php)), the ASC did not have any other options than to formally seal the deal.

In May 2013, the ASC issued the new Recognition Agreement for the KWA, ***"deemed to have commenced on 26 March 2012"***. 26 March 2012 is the date when AKWF members allegedly voted for their new constitution of KWA although it is somewhat unclear how members of one organisation could vote for the constitution of another separate, legally independent company.

Immediately after the new Recognition Agreement for the KWA was signed by both parties, KWA informed the ASC that their strategic development plan, one of the key documents used by the ASC for assessment of eligibility as NSO, previously lodged with the ASC, ***"has numerous factual errors that have been overlooked by both ourselves and the ASC"***. Most of these factual errors are related to the statements implying that KWA was in business from 1983 and AKWF was just one of the former names. It should be noted that the documents were part of an application which contains the following declaration: ***"I, as duly authorised officer of the above organisation, verify that the information provided in this application for Australian Sports Commission (ASC) recognition as a National Sporting Organisation (NSO) is correct... We understand that if information supplied within the attached document is found to be false, the ASC may reverse [sic] the right to revoke or remove a NSO's recognition pending further investigation."***

It is understood that no further investigation was undertaken.