

AREC Future Structure Recommendation

Question and Answers (Q&A)

This article is a follow on to the original discussion article published in the May/June 2024 Break-In Magazine. It provides a few common questions and answers to clarify and assist members with understanding the recommended AREC future structure changes. It is a companion document to that Break-In article that outlines the reason why changes are being recommended.

Branches are encouraged to discuss this topic and provide feedback. We will schedule a couple of webinars to present to NZART members across the country. These have yet to be scheduled and will be notified via Infoline and the national broadcast in advance. There is an open invitation to Branches to the AREC CEO to present to a Branch meeting via online video conference should this be desired.

Q1- Why make changes to the AREC structure?

A1 - As outlined in the article in Break-In there are several reasons to consider making changes to the current AREC structure. The current structure is confusing to external stakeholders and as AREC is not a separate legal entity:

- NZART has been having to employ staff to run AREC (this introduces liabilities and risks in doing so).
- NZART and its branches are not protected against creditors and litigants of AREC as there is no ring fencing of liability.
- AREC cannot enter into legal contracts, which is causing complications for AREC management and its operations. Any AREC contract liabilities would accrue to NZART and the Council.
- AREC groups must be established and attached to an NZART branch. However, members of AREC groups must also be financial members of NZART – this is a complex membership structure which results in a membership sustainability risk with aging reducing membership and not easily being able to bring new members into AREC groups. AREC is largely dependent on Branches to increase membership to provide AREC volunteers.
- AREC operations and associate liabilities become that of NZART, the Executive Council and its officers.
- AREC Groups are attached and governed by NZART Branches, which potentially exposes branch committees to liabilities of AREC activity and operations.

Q2- Why make this change now?

A2 - We need to be compliant with the changes in legislation including the Incorporated Societies Act and the Charities Acts. New government funding rounds will be submitted later in 2024. Funding will start in July 2025 and having any agreed structure changes in place prior to signing the service level agreement would be best.

Q3 – How does this affect Branch AREC participants / volunteers. Any change?

A3 - The new entity is to clarify AREC administrative and management structures, including reporting structures for employees and officers. The current Group arrangements for AREC membership / volunteers don't need to change. Currently, the AREC Groups are established by Branches with approval from the NZART Council. The AREC rules then apply to the Branch/Group. This would be included as part of the new AREC entity constitution.

Q4 – Will non-NZART volunteers and/or Groups be able to join in the new entity?

A4 – This is not a matter being addressed with the recommended change. It may be considered at a later time if considered as beneficial for the delivery of services.

Q5 – How will the Directors of the proposed company be appointed?

A5 – The appointment of Director will be defined within the company constitution. NZART Council as the sole shareholder of the company, will appoint the Board.

Q6 – What will be the makeup of the Board Members of the company?

A6 – While this is not finalised, we expect that it will be similar to that as used by the AREC Trust. Director roles to represent the volunteers voice on the Board will also be considered along with NZART Council representative and a mix of independent and ex-officio Directors.

Q7 - Who will own the company?

A7 – NZART will be the sole owner and shareholder of the company.

A8 - Will the company be a commercial enterprise?

No, it will be a not-for-profit charitable organization. As NZART is a charity, the new company will inherit charity status as an NZART, wholly owned, limited liability company.

Q9 - Does this have any implications with the Health and Safety at work act?

A9 - Yes, as the Lawyer's advice explained there are significant liabilities including H&S for the NZART council and officers of AREC, and potentially further out to Branches under the current arrangements. Moving to the legal entity as a Limited Liability Company immediately limits the liabilities to the company and not the individuals involved.

Q10 - Do these changes have any implications with insurance? (Public Liability and Asset)?

A10 - Yes, it is most likely that the new company will need to take out its own public liability and officers' and directors' insurance. This may also need to cover any H&S and AREC volunteers' activities. Nationally owned AREC asset insurance would be covered by the company where a single NZ wide policy could be put in place to cover all items listed on the AREC Company asset register. Non-national AREC owned assets (e.g., those owned by Branches) would stay the responsibility of the Branch. However, if AREC Groups own assets that are agreed to be AREC assets, these could be considered for insurance cover by the new entity if listed in the AREC Company asset register. This would require an audit and agreement to be put in place and would be subject to funding being available.

Q11 – Will government funding be impacted?

A11 – Indicative approval to establish the company has been received from NZSAR, contingent on satisfactory governance arrangements being put in place.

Q12 – What is the impact on existing AREC assets?

A12 – Currently “AREC” nationally owned assets are technically the property of NZART (AREC) or NZART branches (which vary in legal status). National AREC Assets that have been funded by the Government that are currently registered under NZART would be transferred to the new company. These are all identified in the AREC Asset register and within the NZART depreciation of assets. The current depreciated value of these assets is relatively small. There may be a small GST amount to be covered when the transfer is made.

Assets owned and held by AREC Groups/Branches that are agreed to be AREC assets would be transferred to the company. Other assets would stay as Branch assets.

Q13 - AREC DMR network – how is the ownership currently structured for these assets – would this change with AREC Ltd?

A13 - The majority of the AREC DMR network repeaters are owned by AREC and are recorded on the AREC asset register. This includes the application software that controls the network and repeaters. There are also several VHF DMR repeaters that are owned by AREC on the register. All these would transfer over to the new entity as per answer to question 11. There are a few DMR repeaters that have been sponsored/donated or have been provided by Branches/Groups and have been permitted to connect to the DMR network. These would remain in the ownership of those that currently own them. An agreement to connect to the network would need to be created and signed by the parties to formalise the arrangement (this should already be in place).

Q14a – What happens to the AREC Trust?

A14a – The AREC Trust would be wound up. Its funds, assets, and contracts would be transferred to the new company with the approval of the current Trust Board, the parties to the Joint Service Level Agreement, and the Charities Commission.

Q14b – Would it be a good idea to keep the Trust for donation and bequests as some people may be more willing to donate to a Charitable Trust?

A14b – This suggestion will be considered as part of the detailed change should the change be approved to proceed.

Q15 – Will the NZART Constitution and AREC Rules need to change?

A15 – Yes remits will be required for the necessary changes, and they will be presented to an NZART AGM or Special General Meeting for members approval.

Q16 – How will the new company constitution be created?

A16 – It assumed the current AREC Trust deed will form the basis of the new company constitution, amended as necessary. A review of the AREC Rules will also be undertaken to identify what should be moved to the company constitution and regulations/policies.

Q17 – How will AREC Operation change?

A17 – Essentially AREC will operate with the same branding and name (AREC) as it does now. The changes are largely in the background to establish and operate as a legal entity.

Q18 – What will the new company be named?

A18 – This is still to be determine and agreed. One proposal is ‘AREC Emergency Communications Ltd’ as that would result in minimal change required to current branding material.

Q19 – What happens to the AREC Employees, Contractors, and Officers?

A19 – The current AREC Employees, Contractors and Officers will be transferred to the new company under the same terms and conditions as they are now.

Q20 – What happens to the AREC Trust Board of Trustees?

A20 – Unless otherwise decided, the AREC Trust Board of Trustee are likely to become the interim establishment Board of the new company with the approval of the NZART Council.

Q21 - Why not move All AREC Operations into the AREC Trust?

A21 – The AREC Trust is a separate legal entity. Moving the AREC Operations into the Trust would separate AREC from NZART. There is no intention of separating AREC from NZART. AREC is, and will remain, as a service arm of NZART.

Q22 – Will the company need to carry its own liability and asset insurance?

A22 – As a separate legal entity the company will need to account for is own liability and assets insurance as directed by the board of director. See Question 10 for a more detailed answer.

Q23 - Will the Charities Commission approve winding up the Trust and moving the assets into the new company?

A23 – The Trust Deed has its purpose and objectives that are already closely aligned with those of NZART/AREC. The new company will inherit the same, or very similar objectives. The company will be a not-for-profit charitable organisation. Providing this is achieved, we believe there should be no issues with obtaining Charities Commission authorisation to wind up the Trust and move their operations to the company.

Q24 – Has legal advice been sought regarding options and the recommendation?

A24 – Yes, legal advice and guidance has been provided by Parry Field Lawyer. In their view the move to a not-for-profit charitable limited liability company is preferred.

Q25 – Has a financial accounting opinion been sort on the recommended move?

A25 – Yes, the NZART/AREC Treasurer is a retired chartered accountant. He has advised there are several advantages to making the move as recommended.

Q26 – Does moving AREC Operations to the company reduce the risks and liabilities identified to NZART?

A26 – Yes, as a company, liability would be ring-fenced –mitigating operational risks associated with AREC.

Q27 – Will the company be able to receive donations and raise funds?

A27 – Yes, as a charitable company, it would have charitable tax status and can give tax deductible receipts to donors and funders.

Q28 – Will the company be able to enter into contracts?

A28 – Yes, as a legal entity the company will be able to enter into contracts.

Q29 – Currently governance is complex given the interlinking of the Trust, NZART and AREC Operations. Will moving to the company structure simplify this situation?

A29 – Yes, Governance is straight forward, and will be relatively easy to set up. Bringing all AREC activities into a company structure simplifies governance, with a Board of Directors, and one set of accounts. It also simplifies tax and GST return issues.

Q30 – Assuming the recommendation is approved what is the indicative timeline for implementation?

A30 – the indicative steps and timelines is as follows:

- Publish article and recommendation in Break-In May/June 2024.
- Hold a discussion with NZART members at the AREC Forum directly after the NZART AGM June 1, 2024.
- Conduct two webinar Q&A online conference meetings for NZART and AREC members to ask further questions and provide feedback between July and August 2024.
- Prepare necessary remits and other documentation that is required for NZART members to approve. Circulate these in Break-In.
- Assuming feedback from NZART members is generally positive, consult with the NZART Council and AREC Trust Board to either organise an NZART Special General Meeting (SGM) to approve the recommendation and any constitutional and other changes or present to the next AGM.
- Depending on the agreed timing implement the change to coincide with either the NZART or the AREC Trust financial year end.

Q31 – What liability does NZART have as the Sole Shareholder of the proposed Limited Liability Company?

A31 - Typically there are no liabilities attached to you in your capacity as a shareholder unless the company's constitution provides that shareholder liability is unlimited. Holding shares gives you a financial interest in a company and a level of control and influence over its direction. A shareholder only has liability for the amount payable for acquiring their shares. If these amounts are unpaid, the company may require payment of whatever amount is outstanding for the value of your shares.

Q32 – Will the legal advice provided to AREC be made available to NZART members?

A32 – Yes this will be made available as soon as it can be placed in a ready accessible place on the NZART Website and the AREC Membership Hub.

Q33- Who has been involved and consulted with to form the recommendation?

A33 – As stated in A24 above Parry Field Lawyers have been consulted to provide the legal advice. Two senior Caravel Consulting Limited employees were consulted as part of the AREC Target Operating Model and 10-year strategy workshops. The AREC Trust Board Directors have been consulted during the process. The AREC National Management Team have been part of the deliberations. The AREC/NZART Treasurer who is a retired Chartered Accountant has been consulted. Lastly the NZART Council have been consulted.

Q34 – Will the New Zealand Search and Rescue Council (NZSAR) have a controlling say in the appointment of the company directors?

A34 – The current AREC Trust deed has one Trustee position as a Search and Rescue Sector representative. NZSAR can nominate a person for the position, however this must be approved by the NZART Council.

Q35 – How will NZART Council as the sole shareholder control the company?

A35 – Shareholders get to vote on resolutions at shareholder meetings. These decisions are typically only those critical to the operation of the business, and may include:

appointing directors or auditors, removing a director, adopting a new constitution, or amending the existing company’s constitution, changing the nature of business of the company, approving a major transaction; or putting the company into liquidation and closing the company.

Shareholders are entitled to review the management of the company, and can: question the management, discuss any facet of management; and pass a resolution on management decisions if enough shareholders feel strongly about any particular issue.