



# Independent Oversight Committee

## Independent Oversight Committee information release

May 2022

This document has been proactively released by the Independent Oversight Committee on the Treasury website at

<https://www.treasury.govt.nz/information-and-services/company-and-entity-performance-advice/portfolio-companies-and-entities/independent-oversight-committee>

### Information Withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act).

Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [36] 9(2)(h) - to maintain legal professional privilege

Where information has been withheld, a numbered reference to the applicable section of the Act has been made, as listed above. For example, a [23] appearing where information has been withheld in a release document refers to section 9(2)(a).

### Copyright and Licensing

Cabinet material and advice to Ministers from the Treasury and other public service departments are © Crown copyright but are licensed for re-use under Creative Commons Attribution 4.0 International (CC BY 4.0) [<https://creativecommons.org/licenses/by/4.0/>].

For material created by other parties, copyright is held by them and they must be consulted on the licensing terms that they apply to their material.

### Accessibility

The Treasury can provide an alternate HTML version of this material if requested. Please cite this document's title or PDF file name when you email a request to [information@treasury.govt.nz](mailto:information@treasury.govt.nz).



# Independent Oversight Committee REPORT to the Crown to August 2021

---

Report of the Committee providing independent oversight in relation to the implementation and delivery of the Southern Response Earthquake Services Limited Pre-October 2014 Payment Package

---

## A. Introduction

---

The Independent Oversight Committee (the Committee) was established to ensure that the Package (as that term is defined in the Committee Terms of Reference) is implemented and delivered in accordance with the principles and processes for the Package agreed between Southern Response Earthquake Services Limited (SRES) and the Crown; and with due consideration being given to the interests of affected policyholders.

It is the view of the Committee that SRES is meeting this objective as far as it is legally able to do at this time.

## B. Reports, advice and recommendations

---

The Committee refers to its previous **Report** to the Crown for the period to 1 June 2021.

The Committee provided a **reporting** letter to the SRES Board in June and will report again in August.

The Committee has provided **advice** to SRES on three matters.

1. SRES sought **advice** as to whether the “full and final settlement” clause in the Settlement Agreement with policyholders has been drafted too broadly and should be narrowed. The Committee discussed this issue and the [36]

The Committee’s view is that the “full and final settlement” clause should be only as broad as necessary to resolve the issues intended to be resolved by the Package. [36]

2. The Independent Oversight Committee received two emailed communications from policyholders or their representatives questioning the 6% allowance for professional fees for new homes built under group housing schemes. The justice of this was questioned in the light of a 10% allowance being made for new architecturally designed homes.

The Committee has considered this issue and notes that the 7 December 2020 Cabinet Paper approving the Package states:

[36] We propose that the payments to eligible policyholders be made up of the cost elements that the Court found in the Dodds decision were payable, that is, amounts for professional fees (including Arrow costs), contingencies, and interest on that sum. These would be payable to eligible policyholders where they had not been previously paid these costs by the company. We also propose that certain types of additional costs specified on internal DRAs prepared by Arrow, would also be payable to policyholders.

[37] There will be some differences in the way that these amounts are determined for different policyholders. That is because the documentation Southern Response and its agent Arrow used in managing earthquake claims before 1 October 2014 varied. For example, a policyholder may not have a DRA, or the DRA may not include all of the cost elements. If Southern Response were simply to pay the cost elements specified in a policyholder’s DRA, in some cases this may not result in the policyholder being treated in a similar way with those policyholders who settled after 1 October 2014.

[38] We propose that Southern Response will generally pay the cost elements at the rates specified in a policyholder's DRA, and where there is either no DRA, or the cost elements are missing, it will calculate these amounts in the same way as it did for policyholders who settled after 1 October 2014.

[39] Southern Response will also ensure that, where rates are specified in a policyholder's DRA and these are less than the rates that were paid after 1 October 2014, the rates it pays for those cost elements will be increased to that level.

(This Cabinet Paper is available publicly [here](#).)

A key element of the Package is fairness and consistency in treating policyholders who settled before 1 October 2014 the same as policyholders who settled after 1 October 2014. The Committee understands that SRES adopted the 6%/10% distinction between group-build homes and architecturally designed homes for the purposes of calculating professional fees in its business as usual settlements after 1 October 2014.

The Committee considers that the approach being taken by SRES to calculate professional fees is consistent with the principles of the Package and has **advised** SRES accordingly.

3. SRES asked for the Committee's **advice** as to whether it would support a SRES recommendation to the SRES Board and Crown that the requirement that a Settlement and Discharge Agreement (and Opt-Out Notice) be signed for Package payments be waived on business-as-usual Out of Scope only claims. SRES General Counsel agreed to provide a further paper to the Committee about this issue.

The Committee has made two **recommendations** to SRES.

1. The Committee **recommended** a review of similar processes in New Zealand and overseas where compensation packages have been established to resolve large numbers of civil claims. [26] and [36]

Immediate action points arising from the research include designing a complaints and dispute resolution process for policyholders who dispute Package eligibility or Package payment calculations; and resolving uncertainty about whether Package eligibility is transferable to successors, assignees, and/or executors by deed or by death.

2. The Committee **recommended** that SRES have an internal audit review undertaken of the customer contact details refresh process, in addition to its intended internal audit review of the Package claim calculation and settlement process. A full Internal Audit review has since been undertaken by KPMG. KPMG noted in its internal audit report that interest had been incorrectly calculated for 11 of the package settlements paid to date. SRES made top-up payments to these customers to remedy the interest underpayments following this review. The effect of this error on SRES reputation and credibility was discussed. SRES have since added new controls to this process. KPMG also noted that a number of internal policies and processes relating to package claims and settlements are yet to be fully documented. The Committee requested that SRES prioritise this work, and have KPMG review these policies and processes as soon as possible.

The Committee provides SRES Management with other minor **recommendations** at each monthly meeting. These **recommendations** are summarised in the meeting Minutes.

### C. Summary of work performed

---

The Committee has met formally in June, July and August 2021 as required by the Terms of Reference.

At these meetings, the Committee continues to invest time familiarising itself with the principles of the Package, anticipated and actual issues with its implementation, and establishing communication and governance procedures.

At each meeting the Committee has received operational reports from the SRES General Manager and Project and/or Unit Manager as to the steps SRES is taking to prepare to implement the Package once the current court proceedings reach resolution.

The Committee continues to receive reports from SRES General Counsel and external legal advisers on the ongoing court proceedings and how these may impact implementation of the Package. The Committee is satisfied that the steps SRES is taking in the court proceedings are consistent with implementation of the Package in accordance with its principles.

The Committee now also receives from SRES, and reviews, a List of Discretionary Issues and a Register of Live Legal Issues prior to each meeting.

The Committee monitors the continual updating of contact information for policyholders and is satisfied that SRES is using this time to ensure that it is as prepared as possible for the time when affected policyholders can be contacted and claims can be processed. The Committee also monitors Human Resources progress and is satisfied that this is keeping up with increases in workload.

The Committee has received direct correspondence from policyholders or their representatives on several occasions since the last Report and expects that this will continue to happen from time to time. The Terms of Reference do not anticipate that the Committee will engage directly with policyholders. However, the Committee is mindful that it must be open to sources of information other than SRES and it does not wish to dissuade policyholders from drawing important matters to its attention. The Committee is establishing communication protocols in consultation with Treasury.

The Committee continues to note its appreciation for the quality of reports provided by SRES and its legal advisers and the level of cooperation shown so far.

### D. Recommendation for changes to Terms of Reference

---

No recommendations at this time.

Signed by

Committee Chair, David Ayers

Date: 31 August 2021

---

