

s22

From: LOCKE, Paul
Sent: Monday, 13 July 2020 11:13 AM
To: ROSS, Lydia
Cc: s22
Subject: RE: Historical AAT cases [SEC=OFFICIAL]

Lydia,

Parenting Payment Single was calculated under a pension rate calculator, while Parenting Payment Partnered was calculated under a benefit calculator.

We had a quick look in the Act of the time to see if it had a definition for pension, and included PPS, but couldn't see one.

But if you want to judge it based on calculators, PPS could be viewed as a pension.

Paul

From: ROSS, Lydia <Lydia.ROSS@dss.gov.au>
Sent: Monday, 13 July 2020 10:15 AM
To: LOCKE, Paul <Paul.LOCKE@dss.gov.au>
Cc: s22
Subject: RE: Historical AAT cases [SEC=OFFICIAL]

Hi Paul,

One more question – was the Parenting Payment case a pension or allowance at the time?

Thanks,

Lydia

From: LOCKE, Paul <Paul.LOCKE@dss.gov.au>
Sent: Friday, 10 July 2020 2:46 PM
To: ROSS, Lydia <Lydia.ROSS@dss.gov.au>
Cc: s22
Subject: RE: Historical AAT cases [SEC=OFFICIAL]

Lydia,

See below and attached. Not sure if it helps particularly.

At a basic level, the income test in the 1990s operated in a similar way to how it does today. The major differences lay in the free areas and limits, as well as changes made to pension in 2009 as part of pension reform.

When working out the rate of income support, a person's income was taken into account.

- For unemployment payments, income was worked out each fortnight
- For pensions, income was worked out on an annual basis. The resulting rate was then paid each fortnight.

There were two methods for attaining the annual rate of income:

- Constant rate of income
- Variable rate of income

If a person had a constant rate of income, an annual rate could be easily worked out by taking the fortnightly amount of earnings and multiplying that by the amount of fortnights in a year. Document 1

If a person had a variable rate of income, such as casual earnings which can fluctuate, then the annual rate of income was worked out by averaging earnings over a suitable period of time. Generally, an average of the previous 13 weeks of earnings provided an acceptable pattern of earnings to determine a suitable average.

Mature Age Allowance prior to 1996 was calculated using annual rates, as it was worked out under Pension Rate Calculator A. This changed in July 1996, when Mature Age Allowance became subject to the allowance income test. See:

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/SSPaymentsUnemployment/AppendixB/AppendixBTable6

Paul

From: ROSS, Lydia <Lydia.ROSS@dss.gov.au>

Sent: Thursday, 9 July 2020 5:30 PM

To: LOCKE, Paul <Paul.LOCKE@dss.gov.au>

Cc: s22

Subject: Historical AAT cases [SEC=OFFICIAL]

Hi Paul,

Attached is a doc with brief summaries of three historical AAT cases. Can you please assist in conforming the income test that was applicable for the cases at the time (i.e. fortnightly or annual)?

Happy to discuss,

Lydia

Lydia Ross

A/g Branch Manager

Study and Compliance

Department of Social Services

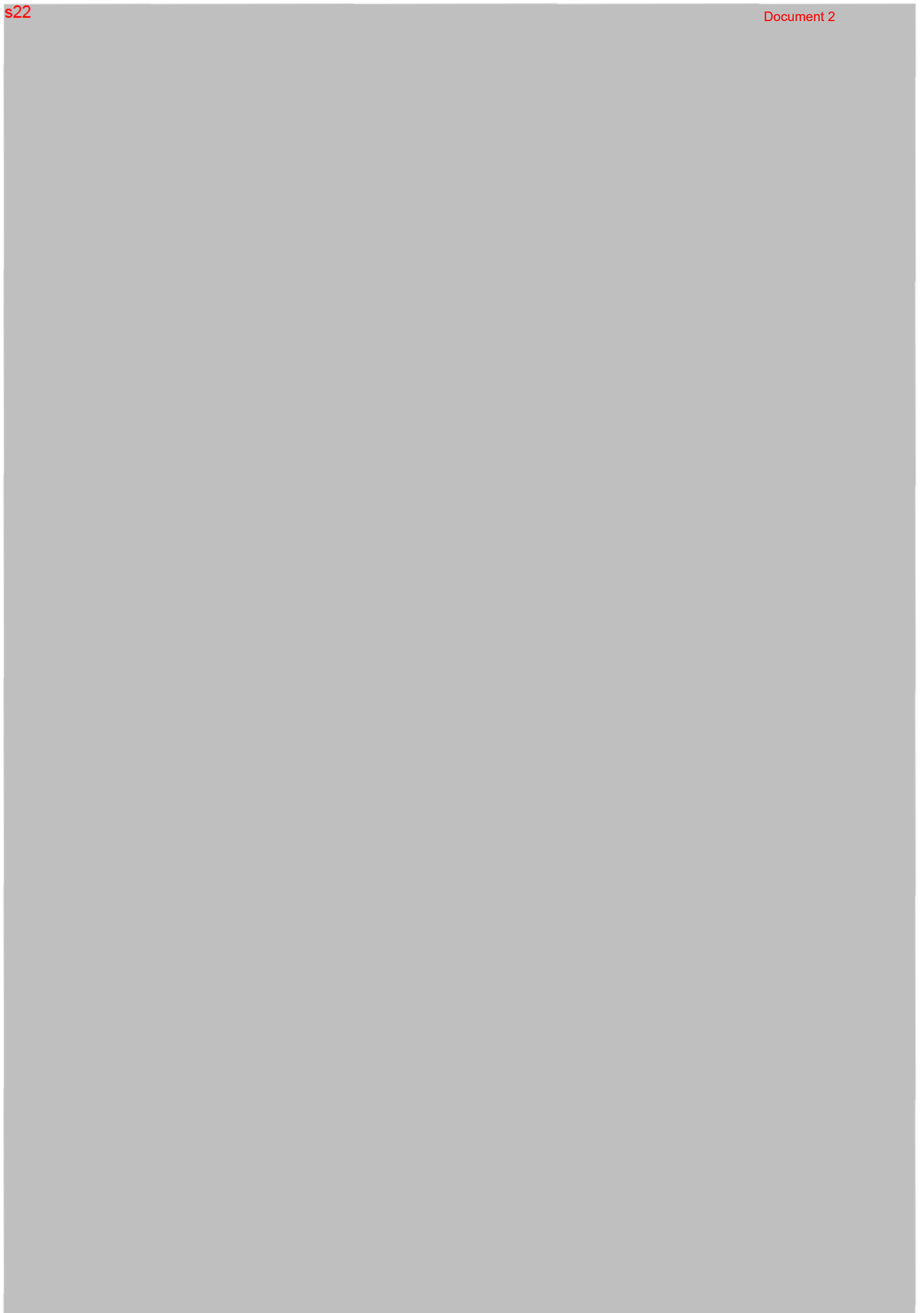
P: (02) 6146 4166 **E:** lydia.ross@dss.gov.au s22

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

AAT decisions on use of income averaging by the department:

Name	Date	Case	Outcome	Averaging Decision
Toor	18 April 1997	Newstart Allowance debt - \$20,396.13 Customer failed to report income earned from employment. Employment verification from four employers contradicted amounts and times declared by customer.	Debt to be recalculated, based on earnings figures reported by three employers. The fourth employer lost detailed records and could only provide gross amounts paid over several months, which the Tribunal did not accept.	The department averaged gross figures from the fourth employer into fortnightly amounts. The Tribunal rejected the averaged income amounts, as the customer was paid over the same period by the other employers, NSA claim forms from that time were unavailable, and the department had reverse-calculated the NSA paid to determine the amount the customer may have declared. The Tribunal considered there was not a sufficient body of evidence to support the reverse-calculation of declared income compared to the averaged employment income amounts.
Mills	18 July 1997	Mature Age Allowance debt - \$7,187.90* Customer failed to report income from employment. Customer argued he was conducting a business as a contractor, that outgoing expenses exceeded his income, so he therefore had no income to declare.	Customer was not conducting a business and should be considered an employee. Debt to be recalculated based on determination of period of employment and averaging of lump sum payment, 50% to be waived due to special circumstances.	Lump sum payment made to Dr Mills to be averaged on a fortnightly basis, amount is an overpayment but partially waived due to special circumstances.
George	15 November 1999	Parenting Payment debt - \$654.20* Customer reported she had commenced work, Centrelink failed to update records and adjust payment. Customer failed to correct record following continued receipt of unchanged payment amount.	Customer did not accept payments in good faith as she had reason to believe she was being overpaid, failed to respond to notices and failed to confirm she was receiving accurate payment amount.	Customer argued she was entitled to some amount of PP due to fluctuating weekly earnings. Department averaged amount earned during the debt period to determine customer had nil eligibility. Tribunal accepted the department's calculations, determined nil entitlement to PP.

*Please note that MAA and PP Single was paid based on the pension income and assets tests, so use of income averaging was permissible to determine rate of payment pre 1999.





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AAT decisions on use of income averaging by the department:

Name	Date	Case	Outcome	Averaging Decision
Toor	18 April 1997	Newstart Allowance debt - \$20,396.13 Customer failed to report income earned from employment. Employment verification from four employers contradicted amounts and times declared by customer.	Debt to be recalculated, based on earnings figures reported by three employers. The fourth employer lost detailed records and could only provide gross amounts paid over several months, which the Tribunal did not accept.	The department averaged gross figures from the fourth employer into fortnightly amounts. The Tribunal rejected the averaged income amounts, as the customer was paid over the same period by the other employers, NSA claim forms from that time were unavailable, and the department had reverse-calculated the NSA paid to determine the amount the customer may have declared. The Tribunal considered there was not a sufficient body of evidence to support the reverse-calculation of declared income compared to the averaged employment income amounts.
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George	15 November 1999	Parenting Payment debt - \$654.20* Customer reported she had commenced work,	Customer did not accept payments in good faith as she had reason to believe she was being overpaid, failed to respond to notices and failed to confirm	Customer argued she was entitled to some amount of PP due to fluctuating weekly earnings.

s22

From: s22
Sent: Thursday, 2 July 2020 8:27 AM
To: ROSS, Lydia
Cc: s22
Subject: FW: Income Compliance - mentions of averaging in the Social Security Guide [SEC=UNOFFICIAL]
Attachments: Guide updates.docx

Hi Lydia

I visited the Library at Enid Lyons yesterday afternoon (Wednesday 1 July 2020) and examined about a dozen hard copies of the Guide to the Administration of the Social Security Act (as it was known then) from 1991 to 1994.

I did not discover any text about income averaging or smoothing other than as identified in later versions, relating to income averaging of earnings for pensioners (for reporting and income test purposes) pre the 2009 changes. The verification processes for pensioners and allowees remain consistent with later versions of the Guide.

Regards

s22

Assistant Director
 Strategic Compliance and Assurance
 Study and Compliance Branch
 Department of Social Services

s22

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From: s22
Sent: Wednesday, 1 July 2020 5:23 PM
To: ROSS, Lydia <Lydia.ROSS@dss.gov.au>
Cc: s22
Subject: RE: Income Compliance - mentions of averaging in the Social Security Guide [SEC=UNOFFICIAL]

Hi Lydia, I've compiled the docs and standardised the entries so it all matches up and is easier to read.

Where the text of updates is included, that just signals that it's new text. There were no references to averaging at all apart from that related to irregular income for pension recipients.

Historical versions of the guide (from 1994 onwards) can be accessed directly though <http://top01er12/ssaguide/Guide%20to%20the%20SSA/Guide%20HTML/index.htm>, if that link doesn't work the link can be accessed through Staffnet at <http://staffnet/policy/policy-guides/Pages/default.aspx> through the "Historical Guides" hyperlink in the second paragraph (I included that because staffnet says the site is only available to DSS and Service Australia staff, so not sure if it's easily accessible remotely).

Thanks,

s22

s22

Policy Officer
 Strategic Compliance and Assurance Section
 Study and Compliance Branch

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From: ROSS, Lydia <Lydia.ROSS@dss.gov.au>
Sent: Wednesday, 1 July 2020 4:32 PM
To: s22
Cc: s22
Subject: FW: Income Compliance - mentions of averaging in the Social Security Guide [SEC=UNOFFICIAL]

Hi s22

I've had a chat to s22 about this material, and it's very helpful. We just need a couple of things - can you please:

- 1) Combine to two docs so all years are in one place
- 2) Confirm that where the text of updates is included and the text does NOT refer to averaging, it's because the change removed a previous reference to averaging?
- 3) Send me the details of where to access the previous versions (I think they are publically available?)

Thanks very much,

Lydia

From: ROSS, Lydia
Sent: Tuesday, 30 June 2020 6:09 PM
To: s22
Cc: MCLARTY, Mary <Mary.MCLARTY@dss.gov.au>; s22
Subject: Income Compliance - mentions of averaging in the Social Security Guide [SEC=UNOFFICIAL]

Hi s22

The team have looked back at Guide versions going back to 1994 (earlier versions are not online). ATO data matching was used since 1991, so we will follow up via the library.

There are very few mentions of averaging except in the context of income reporting for pensioners prior to 2009 (please note this averaging relates to income reported by the recipient, not data from the ATO).

As s22 says below, the Guide was updated in October 2017 to reflect ECI, then again to reflect CUPI in November 2019 but updates did not include averaging.

Very happy to discuss.

Lydia

From: s22
Sent: Tuesday, 30 June 2020 5:43 PM
To: ROSS, Lydia <Lydia.ROSS@dss.gov.au>
Subject: FW: Guide updates table [SEC=UNOFFICIAL]

Hi Lydia

s22 and I have searched Guide form 1994 onwards.

There is no mention of averaging, except for determining income for pensioners pre September 2009.

The Guide was updated in October 2017 to reflect ECI, then again to reflect CUPI in November 2019.

We have found no instruction to average income.

I will follow up with the library about pre 1994 Guide updates.

I have also reviewed the data-matching guidelines but they are procedure-based (use of information timeframes, contact with persons matched) but do not go to assessing overpayments, only noting overpayments may arise.

Regards

s22

From: s22
Sent: Tuesday, 30 June 2020 5:24 PM
To: s22
Subject: RE: Guide updates table [SEC=UNOFFICIAL]

Hi s22 I've looked at the first and last updates for each even year and as expected there were no mentions of income averaging, except for that around pension recipient's irregular income prior to 2009. I've filled in the table with the updates to income assessment, no major changes except that from 2009 pension recipients have had their income assessed in the period it was earned.

Thanks,

s22

s22

Policy Officer
Strategic Compliance and Assurance Section
Study and Compliance Branch
Department of Social Services

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From: s22
Sent: Tuesday, 30 June 2020 2:07 PM
To: s22
Subject: Guide updates table [SEC=UNOFFICIAL]

We need to search for employment income, assessing employment income, income, averaging, smoothing.













From: ROSS, Lydia
Sent: Thursday, 2 July 2020 8:31 AM
To: s22
Cc: MCLARTY, Mary; s22
Subject: Income Compliance - mentions of averaging in the Social Security Guide [SEC=UNOFFICIAL]
Attachments: Guide updates.docx

Hi s22

Here is the combined doc. Unfortunately the historical versions of the Guide are only available internally (see below), but there is a history of what was changed in each update since 1993 available on the public Guide page – ironically it's under "What's New" <https://guides.dss.gov.au/guide-social-security-law/updates/previous-updates> This material shows what sections were changed but does not give the text (and in some cases why e.g. rate change vs policy change). AGS/SAus could use this to identify specific changes they are interested in, then we can follow up.

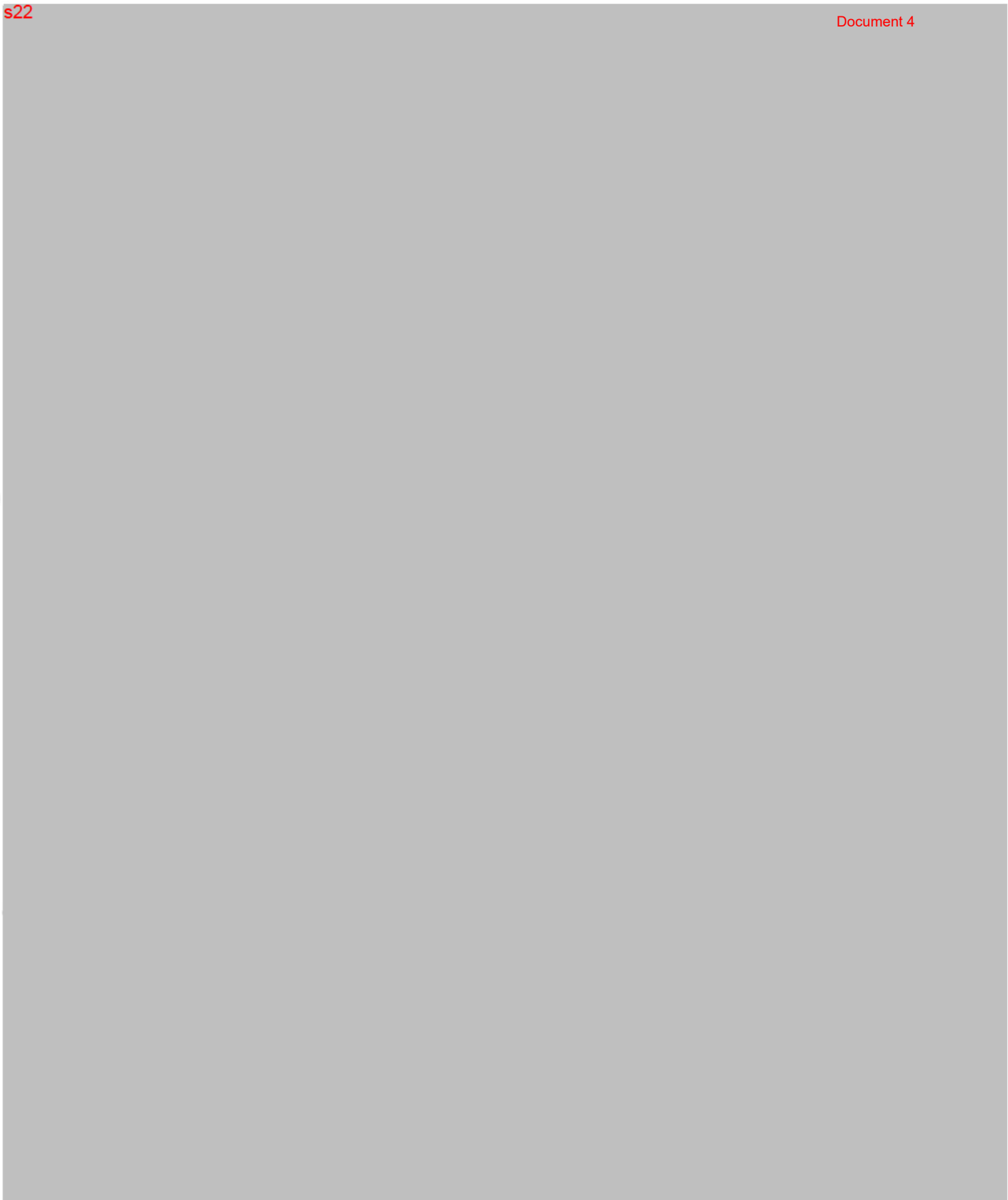
As discussed, the mentions of 'averaging' we found relate to one of the ways pensioners were able to report their income (not averaging ATO data), mostly for a pre-2009 cohort.

s22 checked the hardcopies of the pre-1994 Guides held in the library yesterday, and didn't find any mentions of averaging.

Thanks s22 and s22

Lydia

s22



From: s22
Sent: Tuesday, 28 July 2020 6:51 PM
To: MCLARTY, Mary
Cc: ROSS, Lydia; s22
Subject: FW: For your review [SEC=OFFICIAL]
Attachments: 8. History of averaging.docx; 8. Attachment A.pdf; 8. Attachment B.pdf; 6. AAT Decision Process-Review.docx

The first AAT2 case of TOOR (a casual taxi driver for a number of employers at the one time), Centrelink initially averaged the income from one employer only (Mr Ng) but then decided to disregard Mr Ng's evidence, as the original driver work sheet records had been destroyed by fire, and Mr Toor then claimed that Mr Ng's computer had been stolen when the building in which it was housed was destroyed by fire. The AAT2 concluded that 'If the evidence of the respondent's witnesses [other employers] is to be accepted, then apart from earnings paid to the applicant by Mr Ng, the applicant's earnings, what he was actually paid by way of NSA, and the amount of NSA to which he was entitled in light of his earnings [from his other employers], are known.' The AAT2 concluded that the overpayment was reduced by not taking in to account the earnings figures provided by Mr Ng.

[http://classic.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AATA/1997/726.html?stem=0&synonyms=0&query=title\(toor%20\)](http://classic.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AATA/1997/726.html?stem=0&synonyms=0&query=title(toor%20))

The second AAT2 case of HALLS is confusing as the SSAT demanded Centrelink obtain employer records, which it did, and Centrelink recalculated the debt to a much lower figure (from about \$7k to just less than \$4K), which was again appealed by HALLS to the ARO and SSAT, which found a debt of \$7.7K. The AAT2 declined direct Centrelink to again obtain employer records and found a debt of \$7.5K. Mr Halls claimed the university averaged his pay over each fortnight for the period of the contract, and did not reflect the actual days and hours he worked. The AAT2 concluded that the agency calculated his entitlements based on the best information available (although without access to the confidential AAT1 decision which increased the debt this is difficult to determine). This is not an ideal case demonstrating income averaging by Centrelink.

[http://classic.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AATA/2012/802.html?stem=0&synonyms=0&query=title\(halls%20\)](http://classic.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AATA/2012/802.html?stem=0&synonyms=0&query=title(halls%20))

