

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 775  
3223499

BETWEEN                      MONIQUE PETTET  
Applicant

AND                              TE PUNA WAI O WAIPAPA –  
HAGLEY COLLEGE BOARD  
Respondent

Member of Authority:        Lucia Vincent

Representatives:              Applicant in person  
Madeleine Hawkesby, counsel for the Respondent

Investigation Meeting:        20 March 2024 in Christchurch

Submissions and Further      Up to 3 October 2024 from the Applicant  
Information Received:        Up to 30 September 2024 from the Respondent

Determination:                23 December 2024

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**What is the Employment Relationship Problem?**

[1]     Monique Pettet taught at Te Puna Wai o Waipapa – Hagley College Board (**Hagley**) for nearly ten years starting in 2014. She says she experienced concerning behaviours from her teaching colleagues during her time teaching at Hagley. She says this ultimately lead to her resigning after a period of refreshment leave.

[2]     Ms Pettet says that in addition to being unjustifiably (constructively) dismissed, she experienced several unjustified actions causing her unjustified disadvantage.

[3]     Hagley says Ms Pettet has not raised her disadvantage grievances within time. It accepts she raised a grievance for unjustified (constructive) dismissal within time.

[4]     In response to concerns raised about timing, Ms Pettet says she raised her grievances within time, or if they were raised out of time, Hagley consented to them

being raised out of time or exceptional circumstances occasioned the delay (due to trauma caused by the events giving rise to the personal grievance).

[5] Hagley denies consenting to any grievances being raised out of time. It rejects any exceptional circumstances apply, however if they do, it says that they did not occasion the delay because among other things, the failure to raise them related primarily to Ms Pettet's lack of understanding of the law (and ignorance of the law is no excuse in this context). Hagley says it would not be just in all the circumstances to grant leave including because of the significant passage of time since events occurred and the difficulty in obtaining evidence to refute the claims some of which date back to 2014. Hagley also says Ms Pettet would be statutorily barred if she had raised any disadvantage grievances within time for those she failed to file in the Employment Relations Authority within three years.

[6] This determination deals with the preliminary matter of whether Ms Pettet may proceed with her personal grievances for unjustified disadvantage.

#### **How did the Authority investigate?**

[7] Ms Pettet lodged her original statement of problem (**OSP**) on 13 April 2023. The OSP comprehensively outlined a range of concerns and background.

[8] Hagley lodged its original statement in reply (**OSR**) on 17 May 2023 objecting to any grievances being raised out of time. It also reminded Ms Pettet she was still an employee of Hagley and had not resigned, so could not claim constructive dismissal.

[9] Ms Pettet resigned on 29 June 2023. Hagley responded to her resignation that same day by email accepting and on 10 July 2023 with a letter in more detail.

[10] Ms Pettet lodged an amended statement of problem (**ASP**) on 8 August 2023 that set out her claims again, in comprehensive detail.

[11] Hagley lodged an amended statement in reply (**ASR**) on 5 September 2023. Although Hagley acknowledged that the constructive dismissal personal grievance was within time, it objected to the disadvantage claims proceeding because of timing issues. It also raised concerns about a failure to claim any breaches of good faith in terms of penalties – they also they had not been brought within time.

[12] Ms Pettet made a leave application (**LA**) on 13 November 2023 in which she relied on the ground set out in s 115(a) of the Act.

[13] Hagley responded on 27 November 2023 to the LA noting all the unjustified disadvantage claims were outside the 90-day timeframe. Hagley outlined reasons why leave should be declined.

[14] Ms Pettet provided a statement of evidence on 24 January 2024. Hagley provided a statement of evidence from Ms Milburn on 21 February 2024.

[15] The Authority held an investigation meeting on 20 March 2024 to hear from Ms Pettet and Hagley Principal Rowan Milburn. Both witnesses answered questions under oath or affirmation.

[16] Submissions were timetabled and were received along with further information in the months following up to and including 3 October 2024.

[17] Of note are Ms Pettet's submissions in reply lodged on 12 June 2024. Ms Pettet summarised from 15 discrete disadvantage grievances.<sup>1</sup> Hagley had an opportunity to respond and did so on 30 September 2024. Ms Pettet provided further information following this on 19 September and 3 October 2024.

[18] I pause to note that the Authority has taken a pragmatic approach to resolving the parties' preliminary problem given the extensive material provided to the Authority.<sup>2</sup> This is consistent with the Authority's role in resolving employment relationship problems by establishing facts and determining matters according to the substantial merits of a case, without regard to technicalities.<sup>3</sup>

[19] As permitted by s 174E, this determination does not set out a record of all the evidence and submissions received, credibility findings made, or process followed.

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<sup>1</sup> Table providing further detail from submissions provided on 17 April 2024 at [4.1] to [4.5].

<sup>2</sup> For example, the OSP consisted of 87,000 words with extensive attachments.

<sup>3</sup> Employment Relations Act 2000 (**Act**), s 157.

### **What were the issues?**

[20] The issues requiring investigation and determination were (in relation to each personal grievance):

- (a) Did Ms Pettet raise her grievance for unjustified disadvantage with Hagley within 90 days of the action alleged to amount to the grievance occurred or came to her notice?
- (b) If Ms Pettet has raised her grievance within the 90 days period, has she commenced action in the Authority within three years?
- (c) If Ms Pettet has not raised her grievance within time:
  - (i) Did Hagley consent to Ms Pettet raising her grievance out of time, tacitly or expressly?
  - (ii) Did exceptional circumstances exist that occasioned the delay in raising the grievance, and would it be just to grant leave in all the circumstances?

[21] It is important to note that the focus of my determination is on whether discrete personal grievances for unjustified actions may proceed. If I do grant leave, then these grievances would be decided as to their merit alongside the constructive dismissal grievance (which has been accepted as being within time), after a direction to mediation. Even if I do not grant leave, Ms Pettet may provide evidence supporting her constructive dismissal claim which may cover some of the events subject of this determination. The relevancy of events to that claim likely lessens over time, however.

[22] A related issue arose which was whether the Authority should make an order for non-publication. At the start of the investigation issue, I raised this with the parties in respect of any students identified, personal medical information, witnesses not heard at this preliminary stage who are mentioned and any other person not participating in the proceedings.

[23] I have not needed to refer by name to any students or staff who did not appear as witnesses, preferring to use titles wherever practicable.<sup>4</sup> I have considered but not referred in detail to medical information.

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<sup>4</sup> Using the anonymising option suggested in *MW v Spiga Ltd* [2024] NZEmpC 147 at [96].

## **What is the relevant law on raising grievances?**

### *What is a personal grievance?*

[24] The Act defines a personal grievance as any grievance an employee may have against their employer (or former employer) because of a claim (among other things) that:<sup>5</sup>

... the employee's employment, or 1 or more conditions of the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer.

[25] The Employment Court recently referred to disadvantage as a broad term:<sup>6</sup>

A personal grievance for unjustifiably disadvantage is one that alleges that the employee's employment, or one or more conditions of the employee's employment, is or are affected to the employee's disadvantage by some unjustifiable action by the employer. In that context, "disadvantage" is a broad term. There is no restriction on the type of disadvantage that may fall for consideration. The Court or Authority considers the actual effect of the decision under challenge on the employment. Whether the employment is affected to the employee's disadvantage by some unjustifiable action necessarily involves focussing on what has occurred, and then assessing the impact on the employee's employment.

The "conditions of the employee's employment" are broader than just contractual terms and conditions; they include the rights, benefits and obligations arising out of the relationship as well as conditions which were understood and applied by the parties in practice or habitually.

### *When must an employee raise a grievance?*

[26] Currently, section 114 of the Act requires an employee who wishes to raise a grievance to raise it with their employer within the applicable employee notification period, unless the employer consents to the grievance being raised out of time. For the purposes of s 114 a grievance is raised with an employer as soon as they have made (or taken reasonable steps to make) the employer (or a representative of their employer) aware the employee alleges a grievance that they want addressed. Currently, the

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<sup>5</sup> S 103(1)(b).

<sup>6</sup> At [98] and [99], *Wiles v the Vice-Chancellor of the University of Auckland* [2024] NZEmpC 123 (footnotes and numbering omitted).

relevant notification period is 90 days for most personal grievances.<sup>7</sup> At all relevant times, the timeframe for Ms Pettet was 90 days.

[27] After raising a grievance, an employee cannot commence an action in the Authority more than three years after the date on which they raised it: s 114(6). The Employment Court has confirmed the three-year time limit is absolute and cannot be extended under any of the provisions in the Act that convey power to extend time limits in other situations.<sup>8</sup>

*How does an employee raise a grievance?*

[28] Judge Holden summarised relevant principles when considering whether an employee has raised a grievance in *Chief Executive of Manukau Institute of Technology v Zivaljevic* [2019] NZEmpC 132:<sup>9</sup>

The grievance process is designed to be informal and accessible. A personal grievance may be raised orally or in writing. There is no particular formula of words that must be used. Where there had been a series of communications, not only would each be examined as to whether it might constitute raising the grievance, but the totality of those communications might also constitute raising the grievance.

It does not matter what an employee intended his or her complaint to be, or his or her preferred process for dealing with it in the first instance. It also does not matter whether the employer recognised the complaint as a personal grievance. The issues are whether the nature of the complaint was a personal grievance within the meaning of s 103 of the Act and, if so, whether the employee's communications complied with s 114(2) of the Act by conveying the substance of the complaint to the employer.

It is insufficient for an employee simply to advise an employer that the employee considers that he or she has a personal grievance, or even specifying the statutory type of personal grievance. The employer must know what it is responding to; it must be given sufficient information to address the grievance, that is to respond to it on its merits with a review to resolving it soon and informally, at least in the first instance.

[29] Although communicating a personal grievance may be informal, the substantive content of what is communicated is important. For example, the Court of Appeal has noted that:

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<sup>7</sup> For allegations of sexual harassment, the employee notification period is now 12 months (amended on 13 June 2023 without retrospective application by the Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Act 2023).

<sup>8</sup> At [99], *Blue Water Hotel Limited v VBS* [2018] NZEmpC 128.

<sup>9</sup> At [36] to [38] (footnotes and numbering omitted).

Performance review documents will often involve a frank exchange of views between employer and employee. However, not every criticism of an employer, or the culture within a workplace, will obviously constitute a personal grievance.<sup>10</sup>

[30] There can be difficulty in establishing when a specific grievance arose if the grievance involves allegations of inappropriate behaviour over time (such as bullying or harassment). If part of a continuous course of conduct, an employee must submit a grievance within 90 days of the most recent occurrence. The Authority can still hear evidence of events that occurred outside the 90 day period as long as they are sufficiently connected to events within the period so as to establish a course of conduct that can be evaluated as a basis for the grievance.<sup>11</sup> It will be a matter of fact and degree whether the individual examples of the behaviour are sufficiently connected to amount to a continuous cause of action. Only grievances raised within time attract remedies.

*What does an employer's consent look like?*

[31] An employer may consent to a grievance being raised out of time.<sup>12</sup>

[32] In *Commissioner of Police v Hawkins* [2009] NZCA 209 the Court of Appeal recognised "... whether what has occurred constitutes consent must be a matter of fact and degree."<sup>13</sup> Whether or not the Commissioner had consented to Mr Hawkins' grievance being raised out of time turned on whether he had conducted himself in a way that could reasonably be taken to have consented to an extension of time. Failing to protest and actively engaging with Mr Hawkins on his substantive concerns amounted to implied consent.

[33] The Employment Court referred to *Hawkins* in *UQE v TBN* [2022] NZEmpC 46. There the Court considered it relevant that the employer was operating in an informational vacuum where it was unclear when the events subject of the grievance had occurred. Even though the employer engaged with the dispute resolution process in the collective agreement, this was not consent: "Rather, it was suggestive of good faith engagement by an employer with an employee and their representative in a timely manner about their concerns."<sup>14</sup>

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<sup>10</sup> *Shaw v Bay of Plenty District Health Board* [2022] NZCA 241 at [19].

<sup>11</sup> *Premier Events Group Ltd v Beattie (No 3)* [2012] NZEmpC 79 at [19] to [20] and *Davis v Commissioner of Police* [2013] NZEmpC 226 at [47].

<sup>12</sup> S 114(1).

<sup>13</sup> At [23] and [24].

<sup>14</sup> At [33].

*What are exceptional circumstances?*

[34] If an employee has not raised a grievance within time, and an employer does not consent to a grievance being raised out of time, an employee may apply to the Authority for leave to raise a grievance out of time. After receiving such an application, the Authority, after giving the employer an opportunity to be heard, may grant leave accordingly, subject to such conditions (if any) as it thinks fit, if the Authority is satisfied that the delay in raising the grievance was occasioned by exceptional circumstances (which may include any one or more of the circumstances set out in s 115) and considers it just to do so. If the Authority grants leave, then it must direct the parties to use mediation to seek to mutually resolve the grievance.

[35] Section 115 of the Act sets out an inclusive list of circumstances that may amount to exceptional circumstances. This includes where the employee has been so affected or traumatised by the matter giving rise to the grievance that they were unable to properly consider raising the grievance within the relevant period.

[36] The Supreme Court has described exceptional circumstances as “unusual (the “exception to the rule”).”<sup>15</sup> The Authority must be satisfied that exceptional circumstances are established, and that “... the overall justice of the case (which includes taking account of the position of an employer facing a late claim) so requires.”<sup>16</sup>

[37] In *Telecom New Zealand Ltd v Morgan* [2004] 2 ERNZ 9 the Employment Court outlined three elements to consider when assessing whether an applicant has met the threshold required under s 115(a) of the Act:

- (a) The consequences of the dismissal or other matter giving rise to the grievance must be severe;
- (b) The effects must cause the employee to be unable to properly consider raising a grievance; and
- (c) The incapacity must exist for the whole of the 90 day period.

[38] In *Cronin-Lampe v Board of Trustees Melville High School* [2023] NZEmpC 144 the Employment Court granted an application for leave based on s 115(a) in

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<sup>15</sup> At [31], *Creedy v Commissioner of Police* [2008] NZSC 31.

<sup>16</sup> At [33].

circumstances where school guidance counsellors worked at a school that suffered an extraordinary number of traumatic events, resulting in them suffering from Post Traumatic Stress Disorder. In describing the requirements of s 115(a) the Court said:<sup>17</sup>

Section 115 sets out four particular examples of exceptional circumstances but, as has been held previously, these are non-exhaustive. Under s 115(a), an applicant must establish:

- a) That they were so “affected” or “traumatised”;
- b) By the “matter giving rise to the grievance”;
- c) That they were “unable to properly consider raising the grievance”;
- d) Within “the period specified in section 114(1)”; this is the 90-day period beginning on the date when the action alleged to amount to the personal grievance occurred.

[39] The Court went on to add that s 114(4)(a) requires a grievant to satisfy the decision maker that the delay, in its entirety, in raising the grievance was occasioned by exceptional circumstances.

### **What is the background to Ms Pettet’s grievances?**

[40] Ms Pettet alleges 15 disadvantage grievances. To understand the context in which she says they occurred, it has been helpful to refer to the background.

#### *Teaching roles*

[41] Ms Pettet worked as a teacher at Hagley in 2014 on a fixed term basis then was continuously employed from 2015 until 2023.

[42] During her time at Hagley, Ms Pettet worked in a range of departments including English, Social Studies, Music and Te Reo.

[43] When describing her time working at Hagley, in addition to the concerns Ms Pettet expressed about behaviour by her teaching colleagues, Ms Pettet described anxiety about the financial stress of her underemployment i.e. not having a full-time permanent role and relying on relief work. It appears the low number of permanent hours and lack of certainty about relief work remained an ongoing issue for Ms Pettet throughout her employment at Hagley.

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<sup>17</sup> At [472] to [474], footnotes omitted.

### *Complaints policy*

[44] Hagley has a complaints policy that directs staff members to raise any concern or complaint with the relevant Deputy Principal. In place since 2013, Hagley says it is currently on its website and on the Teams platform for staff. Staff are also made aware of it when reviewed. The policy appears to focus on concerns about bullying, discrimination and harassment.

### *Employment Agreements*

[45] Hagley is a party to the Secondary Teachers Collective Agreement (**STCA**). It employs all teachers on the terms and conditions in the relevant STCA, or on an individual employment agreement (**IEA**) based on the STCA (at the time of signing the IEA) with any additional terms not inconsistent with the STCA.

[46] During her employment, Ms Pettet received a series of IEAs referring to the STCA although she was briefly covered by the STCA when she joined the Union.

[47] Each IEA provided to the Authority refers to the terms and conditions of the relevant STCA applying to the IEA, including a plain language explanation of the services available for the resolution of employment relationship problems. Each letter includes a link or reference to a website to access the STCA.

[48] Although Ms Pettet says Hagley did not provide her with copies of her IEA, it is clear from her signature on each IEA provided that she has at some stage received a copy.

[49] Each STCA contains a clause called: “plain language explanation of the services available for the resolution of employment problems.”

### *Personal trauma*

[50] Ms Pettet describes factors that she says have caused her considerable trauma including during the period of her employment at Hagley. Some of these matters are of a deeply personal nature. Although Ms Pettet earnestly believes these factors are relevant to her claim of exceptional circumstances due to trauma under s 115(a), my findings focused on factors where there are links to the personal grievance. I have not referred to all these other factors except where appropriate to determine the application.

### *Other grounds*

[51] After lodging her LA, Ms Pettet attempted to claim other grounds to find exceptional circumstances existed under s 115(b) and (c), and that Hagley had consented to raising grievances five, seven, ten, 12 and 14 out of time. Hagley objected, noting submissions were not the place to add new grounds to the LA nor claim consent.

[52] Even if the LA had clearly referred to the additional grounds and consent had been previously claimed in the OSP and ASP, I am not satisfied such grounds are made out. Ms Pettet says she did not read the plain language explanation of the services available for the resolution of employment problems while she was employed (because she did not get copies with her IEA). Despite that, I am satisfied the IEA included such a clause incorporated from the STCA and that this was available for her to access online through the link in her IEA or upon request. In addition, the kinds of criticisms the Court has made of such clauses are more extensive and able to be distinguished from the criticisms Ms Pettet has made about the clause in the STCA.<sup>18</sup>

[53] Ms Pettet has also highlighted perceived inadequacies of someone she claims acted as her representative and unreasonably failed to raise a grievance for her. I have considered this issue and the issue of consent under relevant grievance headings below.

[54] With this background in mind, I turn to consider the 15 disadvantages.

### **Grievance One**

[55] Ms Pettet says three of her teaching colleagues in what I will call Department A subjected her to “repeated exclusionary treatment” between June and October 2014. She says she raised this with her Head of Department (**HOD A**) during October 2014 and asked her to address the problem by speaking to those colleagues. HOD A told Ms Pettet not to take it personally. Ms Pettet says this comment from HOD A, as well as being passed over for three permanent jobs in Department A, and being excluded from Department A drinks that year, stopped her from raising her concerns for years. She says she did not raise it again until she lodged her OSP on 13 April 2023.

[56] On Ms Pettet’s own timeline, even if she raised her grievance about exclusionary treatment from her colleagues with HOD A in October 2014, she did not

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<sup>18</sup> Such as those noted by the Employment Court in *Zivaljevic* from [51].

commence her action in relation to it in the Authority within three years as required by s 114(6).<sup>19</sup> She is barred from progressing her claim on this basis.

[57] However, if Ms Pettet did not raise grievance one within time, I do not consider exceptional circumstances apply.

[58] In support of her claim for exceptional circumstances at that time, Ms Pettet has referred to a personal injury she sustained in 2012 (prior to working at Hagley) and experiences from her childhood. I understood Ms Pettet to be saying that coupled with the mental health consequences of the exclusionary treatment, her prior injury and childhood experiences exacerbated her conditioning to tolerate the exclusionary treatment she experienced at Hagley in Department A. She also says she was eager to progress her career and did not feel she could raise a grievance without compromising work opportunities.

[59] I am not satisfied these factors amount to exceptional circumstances as set out in s 115(a) which sets a high standard. The evidence does not show Ms Pettet was so affected or traumatised by the exclusionary treatment that she was unable to properly consider raising the grievance. Even if she been so affected, I do not accept those circumstances occasioned a delay of nearly a decade between when the events occurred and when it can with confidence be said to have raised the grievance in the OSP on 13 April 2023.

[60] Ms Pettet cannot progress grievance one.

## **Grievance Two**

[61] Ms Pettet says a male teacher at Hagley, Head of Department in what I will call Department B (**HOD B**), sexually assaulted and harassed her between 2014 and 2017, cancelled her relief and subjected her to exclusionary treatment in 2018, and behaved in an intimidating way post-terror attacks in March 2019.

[62] Ms Pettet described her account of the sexual assault as occurring on the Seniors final day during 2014 (a Friday evening) when she attended the drinks for Department B, after being invited by HOD B. The alleged assault occurred after those drinks in the department.

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<sup>19</sup> Ms Pettet appeared to accept this at [15] of her submissions dated 12 June 2024.

[63] The following Monday, HOD B communicated with Ms Pettet that he did not regret what had happened and expressed interest in pursuing her romantically. She says further messages were sent including one on 26 November 2014 saying “Haven’t heard from you and just wondering if things are ok. I have the feeling that maybe I’ve made things uncomfortable for you. If so I didn’t mean to and understand your reason for holding back.” In Term 1 of 2015 Ms Pettet recalls HOD B told her he was getting divorced and asked if they could get that coffee (they did not). Ms Pettet says during 2016 and 2017 the HOD B said he had moved and offered to show her around.

[64] Ms Pettet relieved some of HOD B’s classes following the sexual assault and HOD B’s promise of preferential treatment.

[65] Ms Pettet describes communications between 20 and 23 February 2018 that made her feel uncomfortable because of comments like “I owe YOU... simple” and “sounds like I owe you more than a coffee.”

[66] In August 2018 Ms Pettet says she had eight hours of relief cancelled and found out that HOD B would be teaching instead. When she approached HOD B he was confused as he thought all her relief had been cancelled. She also described an incident on 10 August 2018 when HOD B yanked a guitar she had been playing out of her hands.

[67] During the week lessons resumed after 15 March 2019, Ms Pettet says she felt afraid of HOD B after he became an unusually frequent and intimidating presence including because he paced up and down the adjacent hallway near her classroom.

[68] Ms Pettet says after this she spoke to friends which gave her courage to approach the Hagley School Counsellor (**Agent A**). Ms Pettet says Agent A was very concerned when she told him about the incident. She says she was ready to tell Deputy Principal A (**DP A**) and that Agent A agreed to be her support person at this meeting. It appears to have been in or around late March 2019.

[69] On the morning of the appointment with DP A, Agent A informed Ms Pettet that DP A was absent. Due to difficulty rescheduling, Agent A offered to track DP A down and speak to her on her behalf. Not long after, DP A approached Ms Pettet and set up a new meeting time in Agent A’s office.

[70] When the meeting happened, Ms Pettet recalls DP A being cold and distant towards her. Ms Pettet understood DP A had spoken to HOD B as she argued Ms Pettet

had misread HOD B's intentions as he paced the hallway looking for students. DP A said HOD B had cancelled Ms Pettet's relief because he did not have enough timetabled hours to make up a full teaching load, so he had taken his colleague's relief. Ms Pettet says DP A became more hostile when the sexual assault was discussed, reluctantly confirming Ms Pettet could take this further if she made a formal complaint. Because of this, Ms Pettet backed down and said she wanted to get along with HOD B.

[71] Ms Pettet says she had wanted HOD B to stop his intimidating behaviour and not cancel her relief. She wanted DP A to help with gaining more hours and PLD opportunities as well as advice and help on how to address the sexual assault/harassment.

[72] Ms Pettet says she next shared that she had been sexually assaulted by HOD B on 12 April 2021 with Deputy Principal B (**DP B**). In Ms Pettet's timeline of what occurred with DP B lodged with her OSP, she describes the context as being a conversation on a park bench in Hagley Park. They discussed several things then at a point in the conversation says she "confessed that (HOD B) had sexually assaulted me on campus." She says DP B looked shocked but did not ask for further details, changing the subject back to a formal complaint about HOD D (discussed in grievances seven to ten).

[73] Ms Pettet says she also raised this grievance on 6 December 2022, out of time, with the consent of the Hagley Principal at that time, Ms Milburn. Ms Pettet says Ms Milburn suggested progressing her complaint in a subsequent email and that this amounted to consent to raise her grievance out of time.<sup>20</sup>

[74] The alleged sexual assault occurred at the end of 2014. The final concern raised about HOD B's behaviour occurred in the week following 15 March 2019. Ms Pettet says she raised this with DP A within 90 days after that event. The first concern, the alleged sexual assault, occurred some years prior to the final concern identified by Ms Pettet and is potentially separate to the later behaviour. However, even if I accepted the behaviour of HOD B continued from the end of 2014 until the end of March 2019 and that Ms Pettet raised it with DP A then, it would be more than three years after raising

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<sup>20</sup> The email from Ms Milburn to Ms Pettet dated 12 December 2022 referred to the serious nature of Ms Pettet's disclosure and wondered if she would like to make a complaint about the incident, attaching the relevant policy. This email and the circumstances of the discussion are described further in grievance fifteen.

the grievance that it was commenced in the Authority, on 23 April 2022.<sup>21</sup> She would therefore be outside the timeframe for commencing action in the Authority as required by s 114(6).

[75] Even if Ms Pettet did not raise her grievance in that meeting, I have also considered what appears to be Ms Pettet's alternative claims that DP B and Ms Milburn consented on behalf of Hagley to her grievance being raised out of time (or that exceptional circumstances applied).

[76] I do not accept that DP B consented to the grievance being raised out of time – DP B listened to Ms Pettet's statement (which was brief based on her OSP). DP B did not substantively respond to it nor do any of the things one might expect of someone consenting impliedly or expressly to a grievance being raised out of time.

[77] I also do not accept Ms Milburn gave consent during the meeting on 6 December 2022. Expressing empathy and emailing Ms Pettet to invite her to describe her complaint in more detail does not amount to consent. Later communication such as the letter to Ms Pettet on 10 July 2023 from Ms Milburn confirmed that. It is also consistent with the OSR and ASR that made it clear no consent had been given.

[78] I also consider whether exceptional circumstances apply. Ms Pettet believes Agent A may have acted unreasonably in not raising her grievance on her behalf with DP A, so that this met the threshold for exceptional circumstances under s 115(b). However, there is no evidence of that aside from a suggestion. Ms Pettet has provided evidence she says she raised her grievance in that meeting with Agent A present, and that she was unaware of what Agent A may or may not have discussed with DP A prior to that. Ms Pettet did not provide evidence of the arrangements she made with Agent A to raise a grievance. I also note that there may be a question about whether Agent A could be considered an agent for Ms Pettet for the purposes of s 115(b). I do not accept there is evidence of exceptional circumstances on this ground.

[79] I also do not accept exceptional circumstances on the grounds of s 115(a) apply. Although I accept there was an impact on Ms Pettet's mental health of any sexual assault and/or harassment, it could not be said such circumstances continued for a number of years before the grievance was raised, nor that these circumstances continued to cause that delay. Ms Pettet described many different factors that included events from

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<sup>21</sup> Ms Pettet appeared to accept this at [15] of her submissions dated 12 June 2024.

her personal life as well as a desire to succeed at work and perceived resistance from others when she had raised concerns, as factors that discouraged her from raising a grievance. The evidence does not show Ms Pettet was so affected or traumatised by the events subject of grievance two so that she was unable to properly consider raising a grievance until lodging her OSP on 13 April 2023.

[80] For these reasons, Ms Pettet cannot progress grievance two.

### **Grievance Three**

[81] Ms Pettet says DP A cancelled her relief on 5 August 2019, then did not respond when she tried to approach her to ask why. The relief had been scheduled for 12 August 2019.

[82] Ms Pettet says she met with the Principal at the time (**Principal A**) to raise her grievances on 7 August 2019 with the support of HOD D. After telling Principal A about the cancelled relief and her concern students may have complained about her and compared her to a colleague, Ms Pettet says Principal A was cold, visibly annoyed and told her he could not listen to her concerns, and she would have to make a formal written complaint (which could result in legal action against her). Ms Pettet said she did not want to make a complaint and was only looking for support and advice. Ms Pettet says she was impacted emotionally by the meeting.

[83] Principal A sent a follow up email to Ms Pettet after this meeting offering support. It also noted Ms Pettet had mentioned being bullied by students at Hagley and “some indirect bullying or victimisation by staff.” The email asked Ms Pettet to provide further information about these concerns to DP A in relation to staff.

[84] HOD D emailed Ms Pettet the next day asking if she wanted to catch up about the meeting. Ms Pettet responded saying she would talk to counsellors before trying any next steps.

[85] It is likely Ms Pettet discussed her concerns about cancelled relief in detail during the meeting as that was what it was convened for and Ms Pettet’s timeline provided with her OSP outlines this in detail. However, if she raised her grievance about this then, doing so during the meeting on 7 August 2019 would mean Ms Pettet has not

commenced her claim within three years with the Authority (on 13 April 2023). Grievance three is therefore barred by s 114(6).<sup>22</sup>

[86] For completeness, I note the email referred to Ms Pettet mentioning concerns about bullying and asked Ms Pettet to provide further information. Ms Pettet declined to do so. If these concerns related to something other than the cancelled relief situation, then the grievance was not raised with sufficient specificity - it remains unclear whom and what these concerns were about.

#### **Grievance Four**

[87] Grievances four, five and six stem from concerns about teaching colleagues in another Department (**Department C**).

[88] On 6 March 2020 DP A asked Ms Pettet to relieve a class for another teacher in Department C (**Teacher A**) on 13 March 2020. Ms Pettet accepted and emailed Teacher A on 10 March 2020 to ask for his relief that had not yet been set. Teacher A did not respond. Ms Pettet created her own resources which she used with the class.

[89] Ms Pettet, Teacher A and Department C's Head of Department (**HOD C**) met on 18 March 2020 to discuss a range of issues including Teacher A's failure to set relief and to respond to Ms Pettet's email about that. They also discussed an issue that had arisen about a conjoined class. Ms Pettet also wished to discuss how to progress her teaching opportunity in Department C.

[90] Unfortunately, it appears the meeting did not go well from Ms Pettet's perspective. Ms Pettet says despite previous positive interactions, both Teacher A and HOD C became hostile and discouraging towards her. HOD C allegedly told Ms Pettet she could not teach her own resources which she should give to Teacher A to use. Ms Pettet believes that breached her contract. She found the change in HOD C's demeanour especially upsetting as she had previously enjoyed a good working relationship with HOD C.

[91] Ms Pettet says this meeting impacted her badly - she says she suffered severe mental and emotional distress for six days afterwards. She also emailed Hagley on 20

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<sup>22</sup> Ms Pettet appeared to accept this at [15] of her submissions dated 12 June 2024

March 2020 to say she needed to take a temporary break from relief for the next two months.

[92] Although interactions with Teacher A improved for a period afterwards, she says a number of interactions were hostile (including an incident on 29 May 2020 when Teacher A did not make eye contact nor engage in conversation), leading to her deciding she could not return to Department C.

[93] Ms Pettet says she then contacted Agent A in a counselling capacity. Ms Pettet says she did not feel strong enough to talk to Teacher A or HOD C personally so asked Agent A to do so on her behalf. He offered to speak with DP A on her behalf. Ms Pettet says she arranged in May 2020 for Agent A to raise her grievances with DP A and HOD C between 2 and 5 June 2020. When Agent A reported back to Ms Pettet he said HOD C did not recall the meeting. She sought to resolve it by no longer teaching Department C's classes and be paid for the remainder of the year.

[94] DP A agreed to pay Ms Pettet for the remainder of the term (about five weeks). However, by email on 7 July 2020, asked Ms Pettet to decide by 20 July 2020 whether she would return to teaching Department C's classes (as she would not be paid beyond then if she did not teach). Ms Pettet agreed to return.

[95] It is unclear what Agent A said to DP A between 2 and 5 June 2020 and what Ms Pettet had asked Agent A to say on her behalf. There is also a question about whether Agent A can be considered to have acted as Ms Pettet's agent for the purposes of s 115(b) when she was seeing him in a professional capacity for counselling. There is insufficient evidence about what (if any) arrangements Ms Pettet made with Agent A to raise a grievance on her behalf and that he then unreasonably failed to do so. The grounds for exceptional circumstances as set out in s 115(b) have not been made out.

[96] I note that whilst I accept Ms Pettet's evidence of the severe impact on her mental health of the behaviour for the six days following the meeting on 18 March 2020, I do not consider this impact amounts to exceptional circumstances for the entire 90 day period and until it was raised in the OSP on 13 April 2023. It can be contrasted with the ongoing and severe impact as described in the case of *Cronin-Lampe*. The grounds for exceptional circumstances as set out in s 115(a) have not been made out.

[97] Ms Pettet cannot progress grievance four.

## **Grievance Five**

[98] Ms Pettet says DP A asked her to teach Teacher A's lesson in Department C on 24 July 2020. Ms Pettet reluctantly agreed then spoke with DP A for half an hour about her concerns about what had happened in Department C. Ms Pettet recalls talking about the 18 March 2020 meeting and feeling excluded.

[99] Ms Pettet says she raised her cumulative grievances about what had happened in Department C out of time with the consent of DP A during this conversation. The grievances were about the exclusionary treatment experienced with Department staff in February and March 2020, the meeting on 18 March 2020 and the failure of Teacher A to set relief for the second time on 24 July 2020. Ms Pettet says she wanted to continue with her Department C teaching opportunity and for the exclusionary treatment from staff in Department C to stop.

[100] DP A listened to Ms Pettet's concerns. That does not amount to consent to raise any grievances out of time. Raising a further concern about Teacher A not setting relief for the second time could be considered an operational issue that DP A assisted Ms Pettet with. It does not on its own amount to raising a grievance.

[101] Ms Pettet cannot progress grievance five.

## **Grievance Six**

[102] Ms Pettet says she met with HOD C on 28 July 2020 to raise concerns about Teacher A not setting relief for her for the second time on 24 July 2020, resulting in her being obliged to create and teach her own lesson. Ms Pettet says she raised her concerns about the 18 March 2020 meeting out of time with HOD C's consent. She wanted to continue with her teaching opportunity in Department C, move her class to be taught in Department D's classroom and for the exclusionary treatment to cease. Ms Pettet says HOD C promised to talk to Teacher A.

[103] Objectively assessed, Ms Pettet raising a concern about a second failure to set relief on 24 July 2020 with HOD C does not provide enough information to alert Hagley she was raising a grievance she wanted addressed. She raised a concern about a relief resource that could be addressed by HOD C with Teacher A – the nature of the issue did not obviously indicate Ms Pettet wanted to raise a grievance about that on its own.

[104] In relation to the other issues that were out of time and allegedly raised with HOD C's consent, again I am not satisfied there was consent when objectively assessed. HOD C had agreed to speak with Teacher A about setting relief. He did not respond substantively to concerns.

[105] Ms Pettet has referred again to how she had been impacted by the behaviour she complained of. For the reasons outlined in relation to grievance four above, I do not accept exceptional circumstances under s 115(a) apply.

### **Grievance Seven**

[106] Grievances seven to ten are related.

[107] Ms Pettet says she raised grievances in about August 2020 with Acting HOD D out of time with consent. The grievances were about harmful actions and actions of HOD D between 2018 and 2019. Ms Pettet says Acting HOD D initially sympathised but later told Ms Pettet to "forgive and forget."

[108] Ms Pettet says she also raised these grievances again (out of time) with DP B on 30 March 2021 and 21 May 2021 - this is dealt with under grievance ten in more detail.

[109] There is insufficient information provided to establish Ms Pettet raised a grievance with Acting HOD D about HOD D (even if Acting HOD D could be said to be Hagley's representative). Even if she had raised grievances about what occurred between 2018 and 2019, Ms Pettet's timeline shows she was raising them in August 2020 and therefore out of time. I do not accept that listening with sympathy and saying "forgive and forget" objectively amounts to consent.

[110] I also do not accept there were any exceptional circumstances that occasioned the delay based on s 115(a). Ms Pettet provided evidence she sought medical advice, started medication and booked into more EAP counselling, during 2021. She described the stress caused by a range of matters including an unsuccessful restoration with Teacher A, the related impact on her mental health, employment process to address a complaint about her, and reduced income due to limited teaching hours. These factors did not all arise from the event Ms Pettet complains of as the basis of her grievance and so cannot fall to be considered as part of the s 115(a) exceptional circumstance (among other things).

[111] Ms Pettet cannot progress grievance seven.

### **Grievance Eight**

[112] Ms Pettet says she raised cumulative grievances on 29 January 2021 with DP C about what were severe mental health symptoms she says she experienced from workplace trauma and underemployment. She says she began medication during 20 January 2021 as a result. She says she was within time to raise a grievance about HOD D's actions on 28 January 2021, but acknowledged being out of time regarding her grievances about underemployment.

[113] She says she also raised this grievance with DP B on 30 March 2021 and 21 May 2021 – this is dealt with under grievance ten in more detail.

[114] The action on 28 January 2021 referred to was HOD D's failure to follow the agenda she sent for Department D's staff meeting. HOD D departed from the agenda by asking everyone to share how their holiday was. Ms Pettet found this upsetting because she had a difficult holiday and did not wish to share about it (saying she did not go anywhere or do anything). The next day, when Ms Pettet met DP C to verify her identification, she was asked how she was. When Ms Pettet shared that her time at Hagley had negatively impacted her mental health, DP C laughed it off. Ms Pettet says she said was not joking and that she was on medication to cope.

[115] Based on Ms Pettet's summary of what was discussed with DP C, she shared about how she was feeling, but did not discuss the specifics of her concern about Department D's staff meeting. However, even if she had, it was a conversation about how Ms Pettet was, while having her identification verified. I am not satisfied Ms Pettet gave enough detail about her concerns so as to amount to raising a grievance.

[116] I am also not satisfied that exceptional circumstances apply to allow Ms Pettet to raise any grievance about the 28 January 2021 meeting out of time in her OSP lodged on 13 April 2023. As noted above, there were a range of factors at play in Ms Pettet's life during 2021 and I am not satisfied they arose from the events subject of the grievance, even if I accepted the circumstances were exceptional (which I do not).

## **Grievance Nine**

[117] Ms Pettet says she raised a grievance with Acting HOD D on 2 March 2021 about HOD D's attempts to have a conversation with her when Ms Pettet was setting up for her class in the same classroom HOD D was leaving (having finished her lesson). Ms Pettet says that interfered with her lesson setup for three consecutive lessons (on 15 and 22 February and 1 March 2021) and caused her anxiety. She says the grievance was resolved by Acting HOD D speaking to HOD D who taught her class in a different classroom from then on.

[118] Ms Pettet says she also raised this grievance with DP B on 30 March 2021 and 21 May 2021 – this is dealt with under grievance ten in more detail.

[119] Ms Pettet says this grievance has been resolved. However, even if it had not been resolved, I am not satisfied that expressing concern about HOD D talking to Ms Pettet is the kind of concern that would alert an employer to a concern in the nature of a grievance it must address beyond what Acting HOD D did as an operational matter.

[120] Having found it was not raised with Acting HOD D then, Ms Pettet was out of time to raise it in her OSP on 13 April 2023. Although Ms Pettet became anxious about what occurred at the time, this was relatively short lived in that it was resolved by Acting HOD D. I would also not be satisfied exceptional circumstances apply.

[121] Ms Pettet cannot progress grievance nine.

## **Grievance Ten**

[122] Ms Pettet says she raised cumulative grievances with DP B between March and June 2021, out of time, with DP B's consent, about HOD D and Department C staff. These grievances are focussed in substance on Ms Pettet's concerns about HOD D and exclusionary treatment by Department C staff and a revoked teaching opportunity by HOD C (the latter being the subject of grievance four).

[123] In relation to the concerns about HOD D, Ms Pettet refers to two documents she submitted to DP B on 30 March and 21 May 2021. Ms Pettet provided these documents after DP B asked Ms Pettet to outline her concerns about HOD D with a view to resolving the relationship difficulties between them.

[124] The document on 30 March 2021 is a two-page summary of concerns about HOD D covering events from 2018 to 2021. Whilst it can be said this sufficiently detailed a grievance, all the events outlined up to 2020 were out of time by the time Ms Pettet provided this document to DP B.

[125] The events covered in 2021 relate to the holiday discussion outlined in grievance eight and a changeover situation involving HOD D outlined in grievance nine. As already stated, I have found not to have been raised in the way Ms Pettet described. However, by the time this document was submitted, those events which had occurred in January 2021 and March 2021 were within 90 days. The document includes the following entries for 2021:

- Having come back from a stressful holiday of worrying about my career, (HOD D) begins the department meeting on the first day by having everyone share their holiday. I listen as everyone talks about their lovely holidays, knowing they have the career and financial security that is denied to me, no matter how hard I try.
- (HOD D) tries to email me several times but I do not reply as I feel frustrated and anxious. I'd had enough time during her absence to process the cumulative effect of her management on my career and mental health.
- We have a changeover on Monday morning between (classes) and I remain civil but avoid eye contact and keep my answers perfunctory as I don't want to pretend things are okay when they're not. She can see that I'm focused on quickly setting up before my Period 2 class arrives. However, she insists on trying to engage me in conversation week after week. This culminates in more passive aggressive attempts to converse which raises my anxiety levels just before I'm about to teach. I ask (Acting HOD D) to tell her to back off as I had tried non-verbal cues to avoid confrontation but it hadn't worked. I chose to ask (Acting HOD D) as I had spoken to her about my experience with (HOD D) the previous year so she understood the situation.

[126] Although not necessarily clear from the isolated entries that Ms Pettet wished to raise a grievance she wanted Hagley to address, in the context of the full document, I find there was sufficient information for Hagley to be aware of the substance of Ms Pettet's concerns and there was enough to notify a grievance in terms of s 114. However, the remainder of the document contains entries about events that were by that time, out of time. I also consider whether Hagley consented to those grievances being raised out of time.

[127] The document on 21 May 2021 outlined in more detail similar concerns as described in the summary of concerns (and so again, in relation to events that had occurred more than 90 days prior, were out of time). DP B had asked for Ms Pettet to

outline in more detail what her concerns were about HOD D to resolve the relationship difficulties between them. This does not amount to consent on behalf of Hagley for those grievances that were out of time. It was a good faith attempt to resolve difficulties between colleagues. I note Ms Pettet subsequently withdrew her complaint.<sup>23</sup>

[128] The concerns raised about Department C staff and a revoked teaching opportunity cover in more detail the concerns outlined in grievances four to six. In response to a formal complaint lodged against Ms Pettet by Teacher A about an incident that occurred in Department C on 5 May 2021, Ms Pettet submitted a summary of her response to that complaint, submitted to DP B on 16 May 2021. Ms Pettet's response included an apology for how she had spoken to Teacher A and explained it had become difficult to hide how she felt after what had occurred in Department C during 2020. Ms Pettet explained the context for the incident on 5 May 2021 which included her concerns about the events of 2020 (which are also covered in grievances four to six).

[129] DP A emailed Ms Pettet on 18 May 2021 noting Ms Pettet's statement during their meeting the day prior about her document, that she would be "... open to some sort of restorative meeting/discussion..." It is unclear whether this discussion that appears to have occurred on 1 June 2021 was a mediation subject to privilege - it appears not. In any case, Ms Pettet says the meeting did not resolve matters. However, emails following that meeting indicate the concerns raised by HOD C about Ms Pettet and vice versa had been resolved by agreeing to "...let sleeping dogs lie."<sup>24</sup>

[130] When Ms Pettet submitted her response on 16 May 2021, she was out of time to raise her concerns about Teacher A and Department C regarding the events of 2020. DP A had asked Ms Pettet to respond to the complaint from Teacher A. I do not accept that DP A, by asking Ms Pettet to respond to Teacher A's complaint, then attempting to resolve the relationship difficulties between Teacher A and Ms Pettet, amounted to consent. Listening and in good faith attempting to resolve relationship difficulties between colleagues is not necessarily the same as responding substantively to concerns that has been considered consent in other cases.

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<sup>23</sup> Email from DP A dated 16 September 2021 records Ms Pettet retracted her complaint about HOD D and never wanted to make a formal complaint.

<sup>24</sup> Emails from Ms Pettet to Principal A on 15 and 16 June 2021 and a response from another staff member assisting in the process.

[131] I do not consider exceptional circumstances apply in this instance, for the reasons previously stated about events around the same time.

### **Grievance Eleven**

[132] Grievance eleven arises out of Ms Pettet being 20 minutes late to Department D's staff meeting on 20 September 2021 due to a personal matter. Because Ms Pettet attended virtually, she responded to a message from Acting HOD D asking her to join the meeting. Ms Pettet did not hear back. Consequently, she missed the whole meeting. The next day, Ms Pettet tried to talk to Acting HOD D about it, who told her to talk to HOD D, then did not upload minutes from the meeting.

[133] Hagley wrote Ms Pettet a letter about this and other matters in a pre-disciplinary context. After a meeting to discuss the concerns on 18 October 2021, Hagley issued a letter of expectation dated 26 October 2021 that Ms Pettet must attend Department D staff meetings, among other things. No disciplinary action was taken.

[134] Ms Pettet says she raised her grievance about this on 28 September 2021 and during a meeting on 18 October 2021.

[135] In her email to DP B on 28 September 2021, Ms Pettet explained her understanding of what had happened and provided context.

[136] During the meeting on 18 October 2021, Ms Pettet expanded on her explanations from her email. She also talked about how she felt hurt by not being invited into the meeting and disappointment in the behaviour of Acting HOD D whom she trusted.

[137] I do not consider a reasonable person would consider that Ms Pettet raised a grievance in her email and during the meeting when she provided her explanations about the concerns raised by Hagley, explanations that were subsequently accepted and resulted in a letter of expectation dated 26 October 2021.

[138] I do not accept exceptional circumstances under s 115(a) apply to this grievance.

### **Grievance Twelve**

[139] Ms Pettet says she raised grievance twelve out of time on 7 March 2022 with the consent of Deputy Principal D (**DP D**), about DP B's actions between March and

October 2021. The grievance related to DP B's insistence on putting her concerns about HOD D in writing in March/May 2021, misleading Ms Pettet into taking Department C relief in April/May 2021, not protecting her mana or dignity in the restoration meeting on 1 June 2021 and then taking unjustified action against Ms Pettet in September/October 2021 (presumably, the process about being late to Department D's meeting, which DP B ran for Hagley).

[140] When describing how she raised grievance twelve, Ms Pettet described the discussions she had with DP D after a student had assaulted her with a sports ball (the subject of grievance thirteen). During this discussion, Ms Pettet says she explained to DP D about DP B putting her through "hell" the previous year and that her actions felt like a "double gut punch" by forcing her to relive painful traumatic memories. Ms Pettet appeared to acknowledge she described her concerns in brief terms.

[141] Ms Pettet did not raise her grievance with sufficient specificity. I do not accept telling DP D briefly about her experience of DP B as "hell" and forcing her to relive painful memories, amounted to raising a grievance. I also do not accept that listening to Ms Pettet's concerns could amount to consent (express or implied) in the context of a discussion about a student's behaviour and how Ms Pettet was feeling following that.

[142] I do not accept any exceptional circumstances apply to grievance twelve in terms of s 115(a).

### **Grievance Thirteen**

[143] Grievance thirteen focuses on concerns about DP B making a statement that resulted in Hagley following a pre-disciplinary process with Ms Pettet to address it. Ms Pettet says DP D did not follow school procedures, was not communicative and accused her of making false assault allegations against DP B.

[144] The event immediately preceding grievance thirteen occurred on 7 March 2022, when a student threw a ball at Ms Pettet's head. The student was fast tracked.<sup>25</sup> Looking for support, Ms Pettet spoke with DP D about what had happened. When DP D suggested speaking with DP B, Ms Pettet said she would not approach her because she

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<sup>25</sup> Fast tracking is a process whereby a student is removed from class for unacceptable behaviour (and the steps that follow).

had put her through “hell” the year prior and made a comment about DP B and a “double gut punch.” DP D said she would contact Ms Pettet later than week.

[145] In an email to DP C the next day, DP D expressed concern about what Ms Pettet had discussed with her, including that she understood Ms Pettet had said she had been “punched in the stomach, twice” by DP B, and gestured with a fist towards her stomach, among other things. DP D believed it to be a literal statement and not figurative.

[146] Unaware of the email and as a consequence of the incident with the student, Ms Pettet felt unwell for the next few days. She completed an incident report form that week outlining what had occurred with the student. It did not record what was said to DP D.

[147] When Ms Pettet returned to work on 11 March 2022, she received a letter from Hagley dated 10 March 2022. In a pre-disciplinary context, Hagley wanted to make enquiries about the statement which DP B had said was untrue i.e. DP B said she had not punched Ms Pettet in the stomach twice.

[148] Upset after receiving the letter, Ms Pettet says she spoke to DP C and then Ms Milburn. She described her discussion with DP C in her written response on 22 March 2022. In it she recalled not having read the third page of the letter and was surprised when DP C told her she had allegedly accused DP B of punching her in the stomach twice. Ms Pettet denied the accusation and explained the metaphor to DP C who said they had to go through the formal process as it had already started. Ms Pettet then spoke to Ms Milburn who talked to her with empathy and shared about her own experience of being hit by a ball by a student (accidentally).

[149] In her written response of 22 March 2022, Ms Pettet provided background to what happened and explained the misunderstanding. Ms Pettet had used a metaphor to describe an emotionally upsetting situation involving DP B as a “double gut punch.” She expressed concern DP D interpreted her comment in this way, among other things.

[150] A meeting occurred on 23 March 2022 to discuss the allegation. a representative from the PPTA supported by Ms Pettet (**PPTA representative A**). A transcript of the meeting led by DP C for Hagley records what was discussed. Ms Pettet reiterated the misunderstanding and described how hurt and anxious she felt about what had occurred, including DP D’s lack of empathy towards her and the misinterpretation of what she

had said. Ms Pettet says if someone had asked her (such as DP D at the time), she would have clarified her statement was not literal, and it could have precluded a complaint.

[151] Ms Pettet says she raised her grievances when speaking in person to DP C and Ms Milburn on 11 March 2022, then again in her written response dated 22 March 2022 and during the meeting verbally on 23 March 2022.

[152] I am not satisfied Ms Pettet raised a grievance during the discussions with DP C and Ms Milburn on 11 March 2022. Her concerns about the allegation and DP D's statement must be considered in the context of an employment process having started in which Ms Pettet faced an accusation and sought to explain her side of the story. It would not be sufficiently clear to a reasonable person that Ms Pettet had raised a grievance while explaining herself after this process had started. I also do not accept Ms Pettet raised a grievance in her written response on 22 March 2022 and the meeting the next day when she was supported by PPTA representative A in which the discussion provided context and Ms Pettet's explanations. Again, this occurred in the context of an employment process. It would not have been sufficiently clear there were concerns Ms Pettet wanted Hagley to address beyond listening to and accepting her explanations, which it subsequently did in a letter of expectation dated 30 March 2022.

[153] I also do not accept exceptional circumstances existed that occasioned the delay in raising the grievance over a year later in the OSP on 13 April 2023. For similar reasons to those stated previously, the impact of events subject of the grievance was not so significant or ongoing to make Ms Pettet unable to consider raising a grievance. There were other factors in her personal life and unrelated to the events subject of the grievance during the relevant period that played a role in that delay.

### **Grievance Fourteen**

[154] In her submissions about grievance fourteen, Ms Pettet says she raised cumulative grievances out of time with the consent of Ms Milburn during a meeting on 6 December 2022. She says she also raised a grievance within time about HOD D not raising professional learning and development (PLD) concerns with her before her appraisal and lack of effort to invite Ms Pettet to PLD during 2022.

[155] Ms Pettet recorded the meeting on 6 December 2022 and transcribed what was discussed.

[156] In relation to the concerns about the HOD D, it appears Ms Pettet expected HOD D to talk to her about any concern about whether she had attended enough PLD before speaking to Ms Milburn. The conversation with Ms Milburn covered how part time staff are expected to complete PLD on a pro rata basis. It also covered how HOD D had not sent all the invitations for PLD opportunities to Ms Pettet who did not consider it deliberate. Ms Milburn, who was performing Ms Pettet's appraisal, said she would check in with HOD D. It was not clear this was something Ms Pettet alleged to be a personal grievance nor that there was anything for Ms Milburn or Hagley to address. This was only evident at the earliest when Ms Pettet lodged her OSP on 13 April 2023.

[157] Ms Pettet did not raise her grievance about this within 90 days.

[158] The next question is whether Ms Milburn consented to Ms Pettet raising her cumulative grievances about events that dated back to 2014 and were out of time. During the second part of the meeting, Ms Milburn largely listened to Ms Pettet after asking her if she wanted to talk about her wellbeing, noting Ms Pettet's absences throughout the past year. Ms Pettet covered a lot of ground. Ms Pettet communicated her intention to take matters further. Some of the events covered may have included sufficient detail to raise some of these grievances to some extent, but these were all out of time. Although Ms Milburn listened with empathy, and later by email offered for Ms Pettet to make a complaint about HOD B, I do not accept that amounted to consent in the circumstances, particularly where more information was required to progress the complaint about the alleged sexual assault and sexual harassment (among other concerns), the concerns were not responded to substantively and later communications after reviving the ASP were clear that no consent was given (such as the OSR and ASR).

[159] I also do not accept any exceptional circumstances applied. Although Ms Pettet had by that time decided to document her grievances to pursue a claim in the Authority, and communicated that to Ms Milburn, the PLD concern on its own did not cause the circumstances needed to meet s 115(a) and my analysis of why this was not met in relation to other grievances applies to the concerns dating back to 2014.

### **Grievance Fifteen**

[160] Ms Pettet says she did not read a letter from HOD D dated in 2021 until 2023, therefore when she lodged her OSP on 13 April 2023, was within time to raise a grievance about the contents of that letter.

[161] DP B emailed Ms Pettet on 31 May 2021 attaching HOD D's response to Ms Pettet's fulsome submission of concerns. Ms Pettet received the letter then and knew it was a response to her own concerns. She would have been aware of the general nature of the response because it addressed her own concerns. Ms Pettet chose not to read the response until 2023 due to anxiety about it.

[162] I find that the event giving rise to the alleged grievance occurred in 2021 – when Ms Pettet received a response to her complaint. Therefore, Ms Pettet is out of time to raise grievance fifteen when she raised it in her OSP on 13 April 2023.

[163] There was no consent (that is clear from the OSR and ASR). I do not consider any exceptional circumstances apply to this grievance for the reasons outlined in relation to other grievances.

### **Next Steps**

[164] An Authority Officer will contact the parties to schedule an investigation meeting for the New Year to deal with the substantive matter, which will include the constructive dismissal grievance and limited aspects of grievance ten that I have found were raised within time, in paragraph [126] above.

[165] In the meantime, the parties are directed to mediation.

### **Costs**

[166] The Authority does not typically consider an assessment of costs and expenses until the substantive determination has been made.<sup>26</sup>

Lucia Vincent  
Member of the Employment Relations Authority

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<sup>26</sup> Clause 8, "Costs in the Authority," Practice Note 1: [Practice Direction of the Employment Relations Authority](#)