

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/07/2016 11:54:35 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	NSD1063/2016
File Title:	John O'Sullivan v Melbourne University Publishing Ltd ACN 103 214 713 & Ors
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 5/07/2016 1:35:44 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Statement of claim

No. of 2016

Federal Court of Australia
District Registry: New South Wales
Division: General Division

John O'Sullivan

Applicant

Melbourne University Publishing Ltd ACN 103 214 713 and others

Respondents

The Applicant relies on the following facts and assertions:

THE RESPONDENTS

1 The First Respondent is and was at all material times:

- (a) a corporation entitled to be sued in its own corporate name and style;
- (b) the publisher of the book entitled '*Born to Rule: The Unauthorised Biography of Malcolm Turnbull*' (**the Book**), in both print and electronic form, which had wide and extensive circulation in all States and Territories within Australia; and
- (c) the distributor of the Book, in both print and electronic form, which had wide and extensive distribution in all States and Territories within Australia.

2 The Second Respondent is and was at all material times the author of the publication and an employee, servant and/or agent of the First Respondent.

FIRST MATTER COMPLAINED OF

3 On or about October 2015, the First and Second Respondents published of and concerning the Applicant, in all States and Territories of Australia, Chapter 13 of the

{00196038.doc-v}

Filed on behalf of (name & role of party) John O'Sullivan, Applicant

Prepared by (name of person/lawyer) Mark Geoffrey O'Brien

Law firm (if applicable) Mark O'Brien Legal

Tel +61 2 9216 9828

Fax

Email mark.obrien@markobrienlegal.com.au

Address for service Level 3, 44 Martin Place, Sydney NSW 2000

(include state and postcode)

Book entitled '*Grechery*', a copy of which is set out in Annexure "**A**" hereto (**the first matter complained of**).

Particulars of Publication

- (a) The first matter complained of was published on or around 26 October 2015.
- (b) The First and Second Respondents published and/or caused to be published the first matter complained of in all States and Territories within Australia.
- (c) Further particulars of publication of the first matter complained of will be supplied following discovery and interrogatories.

- 4 The first matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant.

Particulars of Imputations

The first matter complained of carried the following defamatory imputations of and concerning the Applicant:

- (a) *That the Applicant conspired with a Treasury official to deceive the Head of Treasury in order to obtain a substantial fee.*
- (b) *That the Applicant had committed a criminal offence which warranted a term of imprisonment.*
- (c) *That the Applicant unlawfully obtained inside information from a Treasury official about an upcoming tender.*

Particulars of parts of the matter complained of

The Applicant relies on the whole of the first matter complained of as giving rise to each of the imputations pleaded. In particular, the Applicant relies on the following parts of the first matter complained of, adopting the paragraph numbering in Annexure "**A**" hereto as follows:

- (a) Imputation 4(a): [102], [103], [104].
- (b) Imputation 4(b): [102], [103], [104].
- (c) Imputation 4(c): [102], [103], [104].

SECOND MATTER COMPLAINED OF

- 5 On or about 26 October 2015, the First and Second Respondents published of and concerning the Applicant, in all States and Territories of Australia, an electronic version of Chapter 13 of the Book entitled '*Grechery*', the transcript of which is in the same terms as Annexure "A" hereto (**the second matter complained of**).

Particulars of Publication

- (a) The second matter complained of was published by the First and Second Respondents by being made available and/or causing to be made available for download by the First and/or Second Respondents to large numbers of consumers in each State and Territory of Australia.
- (b) The second matter complained of was in fact downloaded and read by consumers in each State and Territory of Australia and, by reason of the large numbers of consumers it is to be inferred that the second matter complained of was published to a substantial number of readers in each State and Territory of Australia.
- (c) The second matter complained of was made available and/or caused to be made available for downloading by the First and/or Second Respondents from on or about 26 October 2015.
- (d) Further particulars of publication of the second matter complained of will be supplied following discovery and interrogatories.

- 6 The second matter complained of, in its natural and ordinary meaning, was defamatory of the Applicant.

Particulars of Imputations

The second matter complained of carried the following defamatory imputations of and concerning the Applicant:

- (a) *That the Applicant conspired with a Treasury official to deceive the Head of Treasury in order to obtain a substantial fee.*
- (b) *That the Applicant had committed a criminal offence which warranted a term of imprisonment.*

- (c) *That the Applicant unlawfully obtained inside information from a Treasury official about an upcoming tender.*

Particulars of parts of the matter complained of

The Applicant relies on the whole of the second matter complained of as giving rise to each of the imputations pleaded. In particular, the Applicant relies on the following parts of the second matter complained of, adopting the paragraph numbering in Annexure "A" hereto as follows:

- (a) Imputation 6(a): [102], [103], [104].
- (b) Imputation 6(b): [102], [103], [104].
- (c) Imputation 6(c): [102], [103], [104].

DAMAGE

- 7 By reason of publication of the first and second matters complained of, the Applicant has been greatly injured and his business, personal and professional reputation has been and will be brought into public disrepute, odium, ridicule and contempt.
- 8 The Applicant claims damages, including aggravated damages, interest and costs.

Particulars of Aggravated Damages

- (a) The Applicant's knowledge of the falsity of the imputations.
- (b) The failure of the First and/or Second Respondents to inform the Applicant of the harmful allegations they intended to publish about him in the matter complained of prior to its publication.
- (c) The conduct of the First and/or Second Respondents in presenting the publication of the first and second matters complained of in an over-sensationalised manner.
- (d) The conduct of the First and/or Second Respondents in making the allegations in the first and second matters complained of when they knew or ought to have known that those allegations were false.
- (e) The failure of the First and/or Second Respondents to publish an apology to the Applicant despite a request for same dated 19 November 2016.

(f) The failure of the First and/or Second Respondents to withdraw from sale and recall from distribution and circulation the first and second matters complained of despite the Applicant's request dated 19 November 2016.

(g) Further particulars of aggravated damages will be provided in due course.

Date: 4 July 2016 ~

A handwritten signature in black ink, appearing to read 'Mark O'Brien', written over a horizontal line.

Signed by Mark Geoffrey O'Brien
Lawyer for the Applicant

This pleading was prepared by Mark O'Brien, lawyer

Certificate of lawyer

I, Mark Geoffrey O'Brien, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 4 July 2016

A handwritten signature in black ink, appearing to read 'M. O'Brien', written over a horizontal line.

Signed by Mark Geoffrey O'Brien
Lawyer for the Applicant

ANNEXURE "A"

CHAPTER 13

Grechery

① THE MORNING AFTER the 2007 federal election, TV crews, photographers and reporters crowded outside the Turnbulls' home at Point Piper, hoping for a reaction to Peter Costello's shock decision to go to the backbench. Malcolm was 'having some family time', the journos were told by intercom, but might speak to them after lunch. Seasoned Turnbull-watchers wondered how long he could resist.

② There had been a universal expectation that Costello would take over the leadership—some papers had even trumpeted that day that he was ready to serve. But at an 11 am press conference in Melbourne, Costello had called for generational change instead. With Costello gone, and John Howard beaten in Benelong by Labor's Maxine McKew, the field was wide open: Alexander Downer, Brendan Nelson, Joe Hockey, Tony Abbott, Andrew Robb and Julie Bishop were all touted as potential candidates. Turnbull, though, was first, stepping out of his front gate to nominate on the Sunday afternoon. He announced his candidacy with gusto, urging the party not to waste time in a funk, and offering an energetic small-L liberal remake and no looking back. It later emerged that he'd canvassed at least some colleagues about the leadership before

Costello's announcement, suggesting he might have been contemplating a challenge regardless.

③ Paul Keating, elated over Howard's defeat, gave free character assessments of the likely contenders and plumped for Bishop, the only woman. He thought Nelson was better when he wore an earring and Abbott was a 'young fogey', while Turnbull was like a firecracker: 'I fancy Malcolm is like the big red bungler. You light him up, there's a bit of a fizz, but then nothing, nothing.'

④ The Liberal Party, however, was deeply torn between defending its legacy and recognising a need for change. The divisions were not new, of course, but Costello's failure to challenge Howard meant they were never fully exposed in government. After Howard, the party was unsure whether to break left or right, so it turned into a shambles. Janet Albrechtsen later theorised that Kevin Rudd's election win rested on the emotional appeal of abolishing WorkChoices and signing up to the Kyoto Protocol—an Obama-style victory for hope—and showed the Liberals needed to modernise, to sketch out a more engaging vision than mere capitalism.²

⑤ Turnbull's rapid declaration brought everyone out of the woodwork, although surprisingly for someone who had less than a year's Cabinet experience, he was soon the frontrunner, despite dark mutterings about 'treachery' over his Cabinet leak on Kyoto. Both Abbott and Nelson put their hands up. Downer and Hockey took a few days to rule themselves out, and Bishop and Robb lined up for the deputy's post. As Nelson rang around, he encountered a surprising number of MPs who wanted to get Turnbull over and done with: 'Look, we've got to get rid of Malcolm, but the only way to get rid of him is to make him the leader. Whoever's going to be the leader now will not be our next prime minister. Brendan, you just need to serve on the frontbench and let nature take its course.' He ignored their advice, unwisely, and chose to have a go. The only conservative candidate, Abbott, pulled out the day before the vote, leaving a choice of two moderates in Turnbull and Nelson. It was purely a tactical retreat. Soon afterwards, talking to Tony Jones on ABC's *Lateline*, Abbott was surprisingly candid about the possibility he would challenge later in the term:

⑥ Abbott: 'The Party thinks that it is important to move on from the Howard era, and I obviously have always been very closely associated with John Howard ... I think that in the not-too-distant future, this may well seem like a golden age. But just at the moment, the party is devastated, understandably, by the loss and wants to distance itself from the recent past.'

⑦ Jones: 'I've got to ask you this. Whoever takes the leadership tomorrow, should they remain leader under any circumstances until the next election?'

⑧ Abbott: 'I'm certainly not guaranteeing that I won't in the future challenge for the leadership. But I certainly intend to try to be a very constructive and loyal member of the team of whoever wins tomorrow ... But in the end it will depend on performance how long that person lasts and how well that person goes.'

⑨ Abbott said life would be interesting under Turnbull, at one point describing him as a 'primal force of nature'. Jones then grilled him about his support for what looked like me-tooism—an accusation commonly levelled at Rudd before the election, but now in reverse, with the Coalition aping Labor:

⑩ Jones: 'Here is the Turnbull agenda as we know it: an Australian republic, sorry to the stolen generation, ratify Kyoto, he is sympathetic to the gay agenda and he now rejects WorkChoices outright. Is that the party you signed up for?'

⑪ Abbott: 'Well, that is a different take to that which we have been pursuing over the last few years.'

⑫ Jones: 'You can say that again. I mean, that is a totally different party, it sounds like.'

⑬ Abbott: 'Look, I don't think that that is the totality of Malcolm's position ...'

⑭ Turnbull had already frightened the horses that day, criticising Howard for his failure to apologise to the stolen generations, and for

getting tied up in semantics over the difference between 'sorry' and 'regret'. The comments were enough to shift six to ten votes from the hard right into the Nelson camp on the anyone-but-Turnbull principle, because Nelson would soon back the apology himself. At the Thursday party meeting, Turnbull lost narrowly, by forty-two to forty-five—he might have lost by just one vote if two Liberal senators hadn't turned up late.⁴ It was certainly not a decisive win for Nelson, who made Bishop his deputy and Turnbull his shadow treasurer.

15 Turnbull pledged his loyalty to Nelson but gave him absolutely none: he simply refused to accept the decision of the party room, and the undermining began immediately. Just after Nelson gave his acceptance speech, he was in his office with federal director Brian Loughnane, Julie Bishop's chief of staff Murray Hansen and a couple of his own staff, discussing the press conference they were about to have. Suddenly the door was flung open, with force, and in stormed Turnbull, yelling at Nelson and poking his finger at him, almost right into his chest. One person who was there recalls Turnbull calling Nelson a wimp, telling him his address was funereal, he should man up, lead the party to win the next election and on and on. Nelson said calmly: 'Thank you for telling me what you think. I don't agree with you. I can only imagine the emotions going through you, you must be extremely disappointed. I'm always happy to see you, but I would prefer it if you made an appointment, and certainly to knock on the door before you come into the room.' Turnbull did not say another word, but somebody leaked news of the spat to the media.⁵ Nelson, trying to smooth the waters, called it a 'pep talk'. It got worse from there. In the first week, polls suggested the party had made the wrong choice, showing Turnbull was much more popular than Nelson. On the back foot already, Nelson told reporters: 'It's day five, I mean gimme a break.'⁶ Soon afterwards, Turnbull called Nelson's chief of staff, Peter Hendy, who later recalled Turnbull telling him that

16 my job was to get Brendan to resign in the next few weeks because Brendan was hopeless and he would damage the Liberal brand so much that by the time, he, Turnbull, took over, the next

election would be unwinnable. I told him his suggestion was ridiculous, but he was absolutely serious and he kept calling and making it again, and on occasions he called Brendan and made the same suggestion.⁷

17 In March 2008, Turnbull pulled his old trick, launching a new, comprehensive tax review at the Sydney Institute without telling his leader. By this stage, Nelson's polls had worsened as Rudd enjoyed the longest political honeymoon on record—within four months of the leadership ballot, Nelson was seen as a dead man walking. By the 2008 Budget, the relationship between opposition leader and shadow treasurer was so broken that Turnbull was left out of the loop altogether as the Coalition's centrepiece strategy, a 5 cent cut in fuel excise, was worked up: Nelson was convinced anything he showed Turnbull would leak. When Turnbull did find out, he slammed the proposal in a detailed internal email as fiscally and environmentally irresponsible and was supported by Costello and Downer. Nelson's Budget-in-reply speech actually went down well, which was no doubt galling to Turnbull, who had earlier proposed that he give the speech, in a break with convention, because he would 'obviously' do a better job.

18 Nelson was finally enjoying his first bit of positive momentum as leader when, sure enough, that weekend, Turnbull's email to Hendy turned up in *The Sunday Telegraph*.⁸ Turnbull flat out denied leaking it, but Nelson clearly had no incentive to do it—once again, the Liberals' hopeless divisions were there for all to see. The leadership rivalry was fanned into enmity the following week by the Bill Henson affair, when a moral panic was whipped up over nude pictures of a twelve-year-old girl, taken with parental consent and prominently displayed on the glossy invitation to an exhibition at leading Paddington gallery Roslyn Oxley9. Henson is one of Australia's most successful artists, but when the confronting pictures were shown to prime minister Rudd on live television, he declared them 'absolutely revolting'. As the media went into a frenzy, police seized the pictures from the gallery, politicians from both sides lined up to denounce Henson and the work, and child-protection

campaigner Hetty Johnston labelled them paedophilic. From the PM down, no-one was willing to stand up for artistic freedom: not federal arts minister Peter Garrett, not NSW arts minister Frank Sartor, not premier Morris Iemma, not opposition leader Brendan Nelson. Turnbull was the first politician of any stature to question Henson's ordeal.

(19) In the face of a force-ten media gale, with a ludicrous hunt on for Henson nudes all round the country, Turnbull declared to the world that he owned a couple of Hensons himself (a face and a sunset), had received the invite in question, and was a friend of the gallery's owners. His old mentor Neville Wran had faced a similar controversy back in 1982 when a painting by Juan Davila had been seized by the NSW Vice Squad. Wran had ordered the picture returned, saying: 'I do not think art has got anything to do with the Vice Squad.'⁹ Now Turnbull took a leaf out of Wran's book:

(20) It is important that artists and writers and journalists be able to express themselves freely. Now they have got to do that within the law and there is nothing more important than protecting children and avoiding exploitation of children ... I recognise all of that, but we have got to be very careful because freedom is a very precious thing. And before we have policemen tramping through art galleries, tramping through libraries, going into newspaper offices, we have got to think freedom is what makes this country great and that is what enables us to be the type of nation that we are.¹⁰

(21) Nelson, by contrast, was insisting Henson's images 'violated Australian values'. Turnbull rang and berated him: 'Do you know how many art galleries I have in my electorate?'¹¹ Nelson rebuked him in turn at a NSW Liberal Party branch meeting at Homebush Bay, where Turnbull was sitting in the front row:

(22) Whatever the law says ... we need to be prepared to say that this is wrong ... If we define freedom through rights, if we encourage or allow moral licence in relation to the depiction of children, we devalue them and diminish ourselves. So for that reason it

is not appropriate [that] that kind of imagery and depiction of young people, whether in an artistic environment or any other, have anything other than condemnation from the leadership of the country.¹²

(23) Eventually, the classification board ruled the Henson pictures were not pornographic and the police returned them. No laws had been broken, no charges were laid, but the reputational and emotional wreckage lay everywhere.

(24) In the Gippsland by-election in June, triggered by the resignation of former Howard minister Peter McGauran, there was a big 6 per cent swing against the government. Howard rang Nelson from London and said it was the best by-election result for the Coalition since the resignation of Lionel Bowen in 1990, and something was happening in the electorate. Nelson agreed, and began to take a tougher line on climate change, arguing Australia should not pass an emissions trading scheme until major trading partners acted.¹³ He was rolled on the policy in shadow cabinet—surprisingly, Minchin was still supporting an ETS—and the leadership instability worsened.

(25) In his relentless campaign against Nelson, Turnbull took disloyalty to extremes. Sources say that at a one-on-one meeting in Nelson's Melbourne office in mid 2008, after a shadow cabinet meeting, Turnbull revealed he had had some private polling done on Nelson, and he had a net negative approval rating of 9 percentage points. Nelson replied: 'if that's true, and I have no reason to believe you would deceive me, Malcolm, then you could be expelled from the party for that'. At that, Turnbull pulled back and the polling was never produced. Nelson had no idea whether Turnbull was bluffing, or if the polling had been done, what questions were asked, and whether they were push-polls, for example. For Nelson, however, the implied threat was clear: Turnbull was sitting on a bombshell of some kind. Turnbull says this story is 'completely untrue in every respect' and points out that private polling is taken much less seriously than the many public polls, which give a free appraisal of leaders' ratings and the electorate's voting intentions. Nelson told his closest advisers about the exchange, but let the matter rest as the

private polling was not raised again. There are no ground rules for membership of the parliamentary party, but MPs have been kicked out before, such as when John Howard pushed for WA powerbroker senator Noel Crichton-Browne to be expelled in 1995 over a bitter preselection stoush—the allegations included malicious leaking.

Whatever Turnbull had been up to Nelson's public polling was bad enough; he was branded a 'nevergunnabe' and 'unlectable'. Nelson knew that the situation had become intolerable; he would have to force another showdown with his shadow treasurer. When Alexander Downer and Mark Vaile announced they would retire from politics, the by-elections loomed as a test for his leadership. Costello went to see Nelson and told him he too was ready to go. Nelson asked him to stay, knowing he would need support against Turnbull. Costello agreed to wait, and kept everyone guessing about his intentions until the launch of his memoirs, when he reiterated: 'I've just got sick of saying it. I don't want the leadership. I'm leaving politics when I'm good and ready.'²⁶ Without letting it be known, Nelson earmarked a date for a spill. A week out, he found out from his chief of staff that Turnbull had taken off for a week at the Venice Biennale with Lucy, who was on the organising committee for the Australian pavilion, without telling his leader.

Turnbull was poised to strike, but in the end he barely had time to hit the phones. Nelson brought the spill on himself and lost in another close vote, forty-one to forty-five. Nelson went to the backbench and soon quit politics altogether—ousted within nine months, and never given clear air, he could have been forgiven for wondering what had hit him. A doctor by profession, Nelson told journalist Peter Hartcher he genuinely believed Turnbull had a 'narcissistic personality disorder ... He says the most appalling things and can't understand why people get upset. He has no empathy.'²⁷ Contacted for this book, Nelson refused to be interviewed but would only say: 'Malcolm has an intellect that you can't jump over, that would be the envy of any one of us. But while the world loves talent, it pays off on character.'²⁸

For all Turnbull's undoubted talent and ruthless white-anting, he had not won by much, and it was an act of bastardry that left a lot of

bad blood. The party knew the Turnbull experiment was high-risk, but as Costello later observed, it was something the party had to get out of its system. According to Newspoll, Turnbull got an 8 per cent bounce as better PM, rating 24 per cent versus Nelson's 16 per cent just prior to losing the leadership. But this had to be set against the overwhelming popularity of Kevin Rudd, who was still preferred PM by 54 per cent of voters, and Turnbull's bounce would prove short-lived. By April Rudd was back in the sixties and Turnbull was drifting back into the teens. On Newspoll's two-party preferred measure, Turnbull barely made any inroads, with the Coalition stuck 8–12 points behind Labor throughout his entire leadership. The big picture through 2008 and 2009 was that neither Nelson nor Turnbull was able to pull back the most popular prime minister the country had ever seen.

♦ ♦ ♦

29 The day Turnbull took the opposition leadership, Wall Street giant Lehman Brothers filed for bankruptcy. The subprime credit crunch now turned into the most serious financial crisis since the Depression. Turnbull had had a good crisis so far, being one of the first to warn that tightening debt markets would inevitably be felt in Australia, and arguing that interest rates were too high. While treasurer Wayne Swan was attacking the Coalition for letting the 'inflation genie out of the bottle' with reckless spending, Turnbull was warning that growth was about to slow.

30 Never one to mince words, Turnbull was withering in his attacks on Swan, who was still learning the ropes in early 2008. When Swan stumbled over the meaning of the non-accelerating inflation rate of unemployment (or NAIRU, a common bit of jargon for the ideal rate of unemployment, which does not push up inflation), Turnbull called him 'clueless'. When the banks began unprecedented interest rate hikes out of cycle with the Reserve Bank in January, citing higher wholesale funding costs due to the credit crunch, Turnbull hopped into Swan for defending them: 'He sounded more like a public affairs spokesman to the bankers' association than the

Australian treasurer.' The banks, he said, should be made to prove their funding costs were higher.

(31) At that point, Turnbull believed the credit crisis was easing:

As things get back to normal and as lenders recognise that Australian residential mortgages are a much more secure investment than their counterparts in America, there should be a reduction in wholesale borrowing costs back to more normal levels. When that happens I would expect the banks to pass that relief onto their customers. What I'm concerned with is we're seeing this increase in mortgage rates announced by the banks at a time when the impact of this credit crunch in the US is actually starting to diminish.¹⁷

(32) As the crisis failed to ease, and in fact got worse in March with the failure of Bear Stearns, Turnbull indulged in a bit of revisionism, claiming that in January he had 'feared this global credit crunch would be worse than a lot of people thought'.¹⁸

(33) Campaigning against rate rises was a key theme for Turnbull all that year, and he was vindicated when the Reserve Bank made three emergency rate cuts totalling 2.75 per cent at the end of 2008. It was a bit much, though, when Turnbull tried to claim credit for the first of the cuts, and he was subsequently mocked in parliament by assistant treasurer Chris Bowen: 'I understand the leader of the opposition will soon announce that it was really him who invented the internet as well, Mr Speaker. He's perfecting the Kath and Kim approach to economics—holding a press conference and saying, "Look at moy, look at moy, look at moy."¹⁹

(34) With his investment banking background, Turnbull did have a deeper insight into the causes of the crisis as it unfolded, and he was able to arrange meetings with old Goldman Sachs colleagues like US Treasury secretary Hank Paulson. At the same time, Turnbull was therefore less likely to believe the crisis represented an epochal market failure or the end of 'extreme capitalism', as Rudd argued in a widely discussed essay for *The Monthly* in early 2009, with the eerie Maoist cover image of our great leader at his desk, pen in hand.²⁰

Turnbull pooh-poohed Rudd, and looking back he was probably right. The financial crisis was in no way unprecedented: Wall Street's risk-addled 'plague dogs' have, time and again, inflicted huge losses on the rest of America, from the savings and loans fiasco in the 1980s to the failure of hedge fund Long-Term Capital Management in the late 1990s. They are only emboldened when they are insulated from the fallout with bailouts from regulators fearful of financial meltdown, in a classic moral hazard.²¹

(35) The crisis had its origins in loose lending practices in the US housing market, inspired by Clinton-era policies to encourage low-income borrowers into home ownership—leading to so-called NINJA loans, for people with 'No Income, No Job or Assets'. These loans, arranged by mortgage brokers on commission, were packaged up into new financial instruments, given AAA credit ratings by agencies that were themselves clipping the ticket, and onsold to institutional investors all round the world. The system was riddled with conflicts of interest. It spurred a housing boom, but was bound to fail once house prices fell and borrowers defaulted. The crisis started in 2007 with the failure of two hedge funds in Europe, and the contagion spread slowly but surely, like toxic sludge. In Australia, the float of RAMS Home Loans tanked in August 2007, and in December, when listed property trust Centro announced it could not refinance its debts, the panic started to set in for any company with exposure to US debt markets. By February 2008, debt-laden companies like child-care group ABC Learning and Allico Finance Group were in dire straits.²² Unlisted property trusts and mortgage funds began to freeze redemptions, and soon more than \$20 billion was trapped. When Rudd asked Treasury secretary Ken Henry, 'What is the worst thing that could possibly happen?' Henry answered that Australia might be unable to fund the current account deficit—the difference between imports and export earnings—due to a freeze in debt markets. The government started contingency planning.

(36) After the Lehman collapse, the newly installed opposition leader often seemed to be one step ahead of the government. On 21 September, Turnbull proposed that the Australian Office of Financial

Management, which issues government bonds, should wade in and buy residential mortgage-backed securities, effectively propping up non-bank lenders. Swan slammed Turnbull for proposing US-style bailouts, but five days later the government announced AOFM would invest \$4 billion into the RMBS market. Swan denied he'd 'bankflipped', saying 'this announcement has nothing to do with any pronouncement that has been made by Malcolm Turnbull'.²³

- 37** When Australians started to pull money out of smaller financial institutions, and a run on the banks looked a real possibility, the government proposed to guarantee deposits of up to \$20 000. Turnbull supported the measure to boost confidence in the financial system, but he went out hard, calling for the ceiling to be raised to \$100 000. In the end, Rudd took the ceiling off altogether, alarming the Reserve Bank and causing all sorts of distortions. As Wayne Swan wrote:

38 The only political element to this announcement was that the opposition had announced a similar bank guarantee policy just two nights earlier. We learned some years down the track that this was because it knew our announcement was on the way, thanks to information leaked by a Liberal Party operative working in the Treasury by the name of Godwin Grech.²⁴

39 One of the most extraordinary episodes in Australian politics was coming to the boil. For now, Turnbull was content to look like he was on the ball, crowing in one interview: 'There are a number of important measures that they've undertaken which we've proposed. So you know the deposit guarantee, we encouraged them to take action there. They did, we're supporting that.'²⁵

40 One day in mid-October, as the crisis rolled world markets and the Australian Stock Exchange suffered its worst falls since the 1987 crash, the Rudd government announced its first \$10.4 billion stimulus package, of which \$8.7 billion was made up of \$900 cash handouts to pensioners, carers and low-to-middle-income families. The package was shaped by Ken Henry's famous advice: 'Go early, go hard, go households.' Turnbull supported the package

unequivocally, recognising the difficult circumstances. That evening, Kevin Rudd went on television to give a three-minute address to the nation, and the next day Turnbull tried to score a few political points in a tendentious address-in-reply:

41 With the benefit of hindsight, governments should have acted earlier. Regrettably, Mr Rudd's government missed the warning signs at the beginning of the year and talked up inflation, and consequently interest rates, at precisely the wrong time. Nonetheless, we have offered to work in a bipartisan way with the government in responding to this crisis. I am disappointed that Mr Rudd has rejected our offer.²⁶

42 This was pious nonsense, given the kind of double-game that Turnbull was now playing with his Treasury mole, Grech.

43 Whereas the government was following the 'three Ts' approach advocated by former US Treasury secretary Larry Summers—that spending should be timely, targeted and temporary—Turnbull and Bishop started to follow the more conservative approach of Stanford economics professor John Taylor, who argued tax cuts were a better way to stimulate the economy, using the 'three Ps'—permanent, persuasive and predictable.²⁷ Turnbull started describing the first stimulus package payments as ineffective 'cash splashes' and, when the second, \$42 billion stimulus package was unveiled in February 2009, the Coalition opposed it. Given forty-eight hours to pass the package, Turnbull gave two speeches on the need for prudence, which—now that Australia's terms of trade have collapsed, and with the federal Budget still in the red six years later and likely to remain so for at least the rest of this decade—have certainly stood the test of time.

44 The May 2008 Budget had forecast a \$22 billion surplus for 2008/09, but on the prime minister's updated figures this would now slump to a \$22 billion deficit. Turnbull decried this 'Whitlam-esque' turnaround in public finances. He called for the government to look at 'policies that will create employment and jobs, not at ones which simply involve spending'. He then took on Rudd over his attacks on the neoliberals in the Coalition in his *Monthly* essay:

The prime minister chooses to throw out a few measures today ... but then he couches everything in this unbridled ideological attack which is all about creating a fantasy world in which the Liberal Party is the spearhead of some deregulating, radical right-wing movement. The fact of the matter is, the stability of this country and the economy that we enjoy ... is due to the 11½ years of effective economic management by the Coalition. The fact that our banks are strong is due to the solid economic management of the Coalition. And the prime minister would be better spending his time focusing on measures that will promote employment rather than ideological tirades that are more fiction than fact.²⁸

45

The next day in parliament, Turnbull spelled out in more detail his objections to the second stimulus package, which included the \$14.7 billion Building the Education Revolution program, a second \$12.7 billion round of cash handouts, \$6.6 billion in social and defence housing, and \$3.8 billion for energy-efficient homes—the infamous pink bats program. Opening with some schmaltzy lines about how the schoolkids in the public gallery would have to repay every dollar in the form of higher taxes down the track, Turnbull argued the package was too big, schools halls and libraries were hardly our most pressing need, the second cash splash was unjustified given the jury was out on the impact of the first one, and the insulation subsidy was too high. In short, he nailed it:

46

The plan we were presented with by the prime minister yesterday reeks of nothing more than panic. Far from a steady hand at the tiller, we have a government led by a man who lurches from one ill-considered, ill-thought-out economic decision to another ... We should not be investing in measures or programs which do not stand on their own merits. They have to be measures that we would invest in in good times or bad ... we are dealing with the future of the young Australians who come here to visit this parliament. I do not want to have to look into their eyes and say: 'When you grow up you will be paying higher and higher taxes

47

because of the debt your parents' generation racked up today' ... [G]overnments must be prepared to take tough decisions, to take the right decisions, and to have the courage of discipline. The prime minister has shown none of that. He has wanted to be Santa Claus—everybody gets a prize.²⁹

48 No-one was really listening. The sense of impending doom crowded out any space for the kind of sensible, measured debate Turnbull was proposing. He even offered to sit parliament through the weekend to debate the measures properly, but Rudd, in his element at the centre of a world crisis, had no reason to engage with the opposition.

49 Fundamentally, Turnbull was not convinced that Australia, with its low debt, comparatively sound banks and high exposure to China's boom, was inevitably headed for recession. Consequently, he did not see a need for the government to throw everything but the kitchen sink at the economy. In retrospect, he was almost certainly right. The second package was too large, and it would be followed up by more measures in the May 2009 Budget that would take overall stimulus spending to a massive \$75 billion. Even Ken Henry later admitted he was somewhat surprised by the size of the second stimulus package.³⁰ Treasury subsequently estimated the stimulus spending added 1.9 per cent to economic growth in 2008/09 and the government did manage to avoid a technical recession—although many commentators said Australia was in recession anyway. For Turnbull, politically, the stimulus spending rollout was a gift that kept on giving as the opposition mercilessly exploited every complaint or mishap that occurred in the rushed school halls and pink bats programs—the latter including four tragic deaths.

♦ ♦ ♦

50 It was another of the stimulus programs, OzCar, that shot Godwin Grech to national fame. OzCar was a \$2 billion fund to provide wholesale floorplan finance for car dealers, after two of the biggest providers, American firms GE and GMAC, pulled out, leaving

many dealers in the lurch. Grech was the senior Treasury official responsible for the OzCar program. He was also, as it later emerged, a Liberal Party operative in flagrant breach of the public service code—a corrupt character if he was not so ill—and very close to Turnbull. The so-called 'OzCar affair', or 'Utegate', would turn into one of the most improbable episodes in Australian politics. Then treasurer Wayne Swan did not beat about the bush when he wrote in his memoir that the country 'came as close as it probably ever had to a political coup d'état ... planned, coordinated and executed by an array of conservative forces acting in concert with the then leader of the opposition'.³¹

(51) As far as the public was concerned, it all started in a hearing of the Senate Economics Legislation Committee on 4 June 2009. The timing may not have been coincidental: the previous day's national accounts showed the country recorded positive growth in the March quarter and so had avoided a technical recession, and Labor soon speculated that OzCar was an attempt to get the political debate off the economy. In any case, opposition Senate leader Eric Abetz directed a long series of questions to Grech about OzCar, gradually narrowing in on representations made to him on behalf of car dealers by the prime minister and treasurer's offices:

(52) Abetz: 'Do you know on whose behalf those representations were made?'

(53) Grech: 'Yes, but I am not going to disclose a particular car dealership by name to this committee. I have got to respect the confidences of that particular small business.'

(54) Abetz: 'Yes, I understand that. Possibly, minister [for superannuation Nick Sherry], you could ask the prime minister and the treasurer whether they made representations on behalf of John Grant Motors to avail themselves of this taxpayer-funded OzCar mechanism ... I also note that in the prime minister's declaration of interests, he has a provision of an electorate vehicle supplied by, you guessed it, John Grant of John Grant Motors which includes

registration, insurance and RACQ membership. Mr Grech, in those professional representations to which you have referred by the prime minister's office, was there a declaration that there was at least the possibility of a perception of conflict of interest?'

(55) Grech: 'I am not going to comment on that.'

(56) Sherry: 'I will take it on notice, as you requested.'

(57) Abetz: 'We all know that the answer is no.'³²

(58) Grech was not allowed to answer any more questions on John Grant. Abetz went on to raise the ministerial code of conduct provisions against conflicts of interest, and casually let slip the accusation that the PM didn't respond to every letter from the public: 'He only responds to some, like people that give him a private car.' Asked to withdraw the remark, Abetz continued:

(59) Abetz: '[T]his is a very serious allegation that I have made and I therefore withdraw it. If the allegation is right, will the prime minister resign?'

(60) Sherry: 'Don't be stupid, Senator Abetz.'³³

(61) Abetz was not being stupid, but he was getting a little ahead of himself, if not jumping out of his skin with excitement at the trap he was laying. Half an hour later, Turnbull got up in the House, raised the question of ministerial ethics, and asked Rudd whether he or his office had made representations on behalf of Grant, throwing in: 'What have you got to hide?' Rudd said he would check, but noted that the car was an electorate vehicle declared on his pecuniary interests register since 2007. The car itself was nothing special: a cheery 1996 Mazda Bravo ute worth less than \$5000, with big yellow signs on the side: 'Kevin Rudd's mobile office'. A little later, Rudd confirmed neither he nor his office had made representations on Grant's behalf.

(62)

Turnbull asked much the same question of the treasurer. Swan replied:

(63)

It is the case that Mr Grant made representations to my office, and he was referred on to the SPV [special purpose vehicle], just like everybody else. I have no idea what the outcome of that was. But it is entirely normal that, in circumstances where car dealers right around this country were potentially going to the wall, car dealers would have been ringing members of parliament, including the treasurer's office, asking how they could make contact with this organisation in the Treasury establishing the vehicle.³⁴

(64)

Turnbull and Abetz had got what they wanted: an allegation and a denial given in parliament. There was a flurry of interest, and the story died away. The next sign that something was brewing was at one of the parliamentary calendar's night-of-nights, the press gallery's annual midwinter ball. Turnbull sought out the PM's economic adviser, Andrew Charlton, and gave him a blunt lecture about honesty. A file note made by Charlton was later read into *Hansard* by Rudd, describing how Turnbull, seated at the table next to Charlton's on that Wednesday night, initiated the following conversation with him:

(65)

Turnbull: 'Hello. You are Andrew Charlton.'

(66)

Charlton: 'Hello ...'

(67)

Turnbull: 'Let me give you some advice because I think you have a very promising career ahead of you. Integrity is the most important thing in the career of a young man ... That is why I encourage you, no matter what the circumstances, no matter what the pressure, not to lie.'

(68)

Charlton: 'Thank you for the advice. I don't feel any pressure to lie.'

(69)

Turnbull: 'This whole OzCar issue will be very damaging for you. Let me just give you some friendly advice. You should not lie to protect your boss.'

(70)

Charlton: 'I have not.'

(71)

Turnbull: 'You know and I know there is documentary evidence that you have lied.'

(72)

Charlton: 'There is not.'

(73)

Turnbull: 'Andrew, you know that there is documentary evidence. This could be very damaging for you.'

(74)

Charlton: 'I have not had any contact with Mr Grant.'

(75)

Turnbull: 'Ah well, I advise you to consider your actions very carefully.'³⁵

(76)

It was a nasty flash of the Turnbull. However, while it rattled Charlton, and was noticed by a few people present, it was not reported the next day. On the Friday morning, though, the *Daily Telegraph* splashed on a story by Steve Lewis, headlined 'Car deal: PM in a spin', stating there were 'several emails which suggest the prime minister was keen to ensure that John Grant Motors was considered for attention', and that 'fresh allegations of high-level interference' would feature at a Senate hearing that day³⁶—it was the economics legislation committee, which had been referred the OzCar appropriation Bill. Godwin Grech, waking up to the news, immediately emailed his bosses, including Ken Henry and Swan's ministers, panicked that he would be fingered as the source of the story and explaining that although he had been contacted repeatedly by Lewis the previous day, he had denied receiving communications from the PM's office. After conferring with Rudd's office, Swan put out a statement denying the allegations and revealing Turnbull's threats to Charlton at the midwinter ball.

77

When the hearings got underway that afternoon, Grech squirming in the spotlight, Swan's and Rudd's offices were glued to their internal TV screens. According to Swan, it soon became patently clear that Grech and Abetz were acting in concert, and a message was sent through to the Labor committee members that Grech should be treated as a hostile witness. Abetz, meanwhile, kept hammering on the question of representations made to Grech, until he prised out this admission from Grech: 'My recollection may well be totally false or faulty, but my recollection ... is that there was a short email from the PMO to me which very simply alerted me to the case of John Grant. But I do not have the email.'³⁷

78

The allegation was gossamer-thin, particularly given it was prefaced with repeated statements that Treasury had searched its computers and found nothing. But the opposition had prepped the press gallery that it would land a killer blow on the PM that day, and Turnbull was clearly convinced he had proof that Rudd and Swan had misled parliament. After the committee hearings wound up, Turnbull strode into a packed press conference and, in his most earnest tone, declared:

79

These are grave allegations that reach the highest offices in the government of our nation. The prime minister and the treasurer have used their offices and taxpayers' resources to seek advantage for one of their mates and then lied about it to the parliament. If the prime minister and the treasurer cannot immediately justify their actions to the Australian people, they have no choice but to resign.³⁸

80

It was an historic blunder. That evening, the PM issued a statement saying no such email could be found and the email must be false. It didn't stop the News Ltd tabloids going ahead with a follow-up story by Lewis, who claimed the contents of the email, allegedly sent by Charlton to Grech on 19 February, had been read out to him and were as follows:

81

Hi Godwin, the PM has asked if the car dealer financing vehicle is available to assist a Queensland dealership, John Grant Motors,

who seems to be having trouble getting finance. If you can follow up on this asap that would be very useful. Happy to discuss. A.³⁹

82

Rudd announced a federal police investigation, and by the Sunday, notwithstanding another barrage from the Murdoch papers, he struck back—lethally prim—standing under an umbrella with Thérèse outside a church in Canberra:

83

Mr Turnbull and the Liberals have been boasting for a long time now that they are in possession of this information. Well, the time has come to produce this information to the parliament for authentication. If, when parliament resumes in twenty-four hours, Mr Turnbull fails to produce this email, this email upon which his entire case against the government is based, for authentication, he has no alternative but to stand in the parliament, apologise, and to resign.⁴⁰

84

By that time, Ken Henry had ordered a search of Grech's computer and Treasury officials had been shocked at what they'd found. Grech had gone completely rogue. Amid solicitations for his welfare, he was ordered to take a week off. On the Monday morning, the Australian Federal Police raided his home and found that the supposed email from Charlton had been concocted inside Treasury and sent by Grech to his home computer. The email was indeed a fake. Grech, frustrated at his inability to find this email he believed existed, had forged one. Turnbull had been comprehensively stitched up.

85

Unfortunately for the opposition leader, TV cameras were rolling inside his office the very moment the news broke. *Australian Story* had been working on a profile, recording the long and deeply personal interviews with Malcolm and Lucy that have been quoted so extensively in this book. Given the disaster that was now unfolding in real time, it was golden footage for the ABC, but no doubt excruciating for the Turnbulls—Lucy was there on the day. The whole office was dumbfounded, and Lucy asked the obvious question: 'How can you concoct an email?' Turnbull later told the program he was shocked that an email could be fabricated inside Treasury, that it was 'scarcely believable'.⁴¹

86 In parliament, Turnbull moved a motion calling for Swan to make a full statement on OzCar, tabling all emails and correspondence. With an icy fury, Rudd turned it back on him, moving a devastating censure motion that spelled out Turnbull's personal culpability in the whole tangled business. 'For weeks he has been talking up this alleged smoking gun to editors around the country,' Rudd said, adding that:

87 The member for Wentworth is not only not fit to be leader of the opposition by his actions in this sordid Turnbull email forgery affair, but he has also disqualified himself from ever being fit to serve as leader of this country. Let us be clear about what is at stake here: this fraudulent email is the entire rock upon which the leader of the opposition has constructed his case against me, the treasurer and the government. And this rock has now disintegrated into sand.⁴²

88 Consumer affairs and small business minister Craig Emerson joined in, claiming Turnbull had thought he'd found 'a dirty little shortcut to The Lodge'.⁴³

Reeling, Turnbull tried to shift the focus onto Swan, who he believed was more vulnerable, but he could not escape the forged email. In the House that week, he was flayed mercilessly. When Turnbull asked whether the treasurer had given a comprehensive reply, Rudd replied:

89 I, as prime minister, have absolute confidence in the treasurer of the Commonwealth of Australia. I say that in the full confidence that those sitting behind the leader of the opposition today have passing and fading confidence in him. We have here a leader of the opposition who stands in this chamber in a state of denial, as if somehow the events of this week have simply not happened, they have just passed by, they are of no consequence whatsoever and it is all simply a bad dream that will go away. I have something to say to the leader of the opposition. This is not a bad dream that will just go away. It is a nightmare, and it will not go away.

90 When Turnbull called for a judicial inquiry, finance minister Lindsay Tanner declared:

91 We have hit the jackpot. After his own case has collapsed in total embarrassment, the leader of the opposition is now moving for a judicial inquiry into the entire affair ... This must be the first occasion in Australian political history where a leader of a party has stood up and demanded a judicial inquiry into himself.⁴⁴

92 Turnbull kept on raising OzCar, as though there was a principle at stake, but the number of backbenchers turning up to support his OzCar motions dwindled. In truth, Turnbull's case against Swan was never strong: there was evidence that other car dealers had got as much if not more attention from the treasurer, and poor old John Grant had got nothing in the end. Turnbull had unleashed a monster that had turned on him.

93 The mauling was drawn out and painful: a series of inquiries got underway—the auditor-general, the AFP, the Senate privileges committee—which delivered their findings over the next four months. As the details emerged, they were arguably more damning even than Turnbull's silly over-reach at the press conference after the Senate hearing, because they showed how premeditated the attack was. Grech had been corresponding with Turnbull and other Liberal Party figures for months, particularly former Howard chief of staff Arthur Sinodinos, himself ex-Treasury, and Credit Suisse chairman John O'Sullivan, who had sold his notes to Turnbull back at uni all those years ago and was now president of the Wentworth Forum (he was also then married to *The Australian's* Janet Albrechtsen). Grech was a Liberal mole, on first-name terms with all of them, and working actively against the government he served—advising, leaking and worse.

94 Back in November 2008, there'd been a suggestion that Grech might join Turnbull's office. Someone close to Turnbull wrote to Godwin (their name was redacted in the correspondence):

95 I think MT would welcome you with open arms if you wanted to work with him and I am sure he would place you in a very

senior role. My view is that you could be both a strategic and economic adviser for MT but you would have to really want to do it. I know MT holds you in extremely high regard and treats you with absolute respect ... Let me know because I will talk to him if you are keen.

To which Grech replied:

I have long wanted to work as a staffer (although I would much prefer in government!). As I have told [sic] the plan was to move to the PMO after Howard won last year and to be there as he served out his last period in office (alas he lost the election). Health is an issue for me, I cannot hide that; but I am determined not to let that stop me. My immediate motivation is to place myself where I think I could be of most value to MT and the party. At this stage, I am probably [of] more value here in Treasury (albeit the personal risks I am taking). I am also doing some fundraising for MT—he tells me that the cupboard is bare!

Grech's emails to Sinodinos were businesslike: in one, in May 2009, he proposed that a 'Turnbull government' should establish a new national economic forecasting council, and attached a brief outline. Sinodinos, then working at NAB, gave a clipped response: 'Thanks mate. How would this body relate to the Parliamentary Budget Office? Treasury would never want to let go of the forecasting capability ...'

Grech let it all hang out in his emails to O'Sullivan, which were full of praise for Albrechtsen's columns—and offered a few leads as well. Grech complained about US president Obama—calling him the 'black Jesus', and a 'pure fake' like Rudd. He complained about Rudd failing to intervene to stop late-term abortions in Victoria. He complained about Treasury being 'as left-wing loony as the government it serves'. He complained that Treasury was too pro-ALP and its advisory board was stacked with Labor people. He complained about Ken Henry's ongoing talks with Keating.

The correspondence with Grech compared Henry with Keating-era RBA governor Bernie Fraser, warning ominously that he was 'overtly political and will have to wear the consequences'. Turnbull was indeed openly critical of Henry in 2009 as part of his criticism of the government's stimulus spending. Turnbull called Henry an 'ambassador'⁴⁵ for the government who was 'wheeled out in a way historically public servants haven't been in Australia'.⁴⁶ Turnbull was playing the man and the ball.

Grech was also worried about the slow-bleed leadership speculation surrounding Peter Costello, and the threat he posed to Turnbull. In March, Grech had a chat with Turnbull about it and reported back to O'Sullivan:

We did speak at some length on Sunday night. T will dig in, and even if blown out, will wreak havoc from the BB [backbench]. I told him to hold firm if he does not wish to pursue a high-risk alternative of calling PC's bluff—and that of the party room. Money is also a potent weapon for T, i.e. the party's lack of it.

Most outrageously, Grech showed himself prepared to favour a car dealer who was a Liberal donor—exactly the maladministration Turnbull had alleged in parliament—and to favour O'Sullivan and Credit Suisse, which was advising on the OzCar fund. In one March email he proposed:

Re fees—what I have in mind is that once Rudd and his hacks sign off on Ford Credit, you and I can change the contract to reflect your preferred fee arrangement and push that through quickly next week. I will not be running it past Henry and co.

To which O'Sullivan replied: 'Thanks Godwin. Sounds sensible.' It was breathtaking, and it was amazing that nobody landed in jail. Another email from Grech gave O'Sullivan early warning of an upcoming tender and said Credit Suisse 'should definitely put its hand up—something extraordinary would have to happen for you not to end up on the panel and to cream most of the work'.

105 On 25 May Grech emailed Sinodinos, asking him to contact Eric Abetz ASAP and let him know 'I am Lib'. The Senate estimates hearing was looming. Six days later he sent a page of questions about OzCar to Abetz's chief of staff, Brad Stansfield, which were almost exactly what the senator asked him on 4 June, including the question about John Grant. A day after the hearing, Grech emailed Turnbull to suggest a way forward: it would be possible to get Grech back on the stand to answer more questions, if the OzCar appropriation Bill was referred to the Senate legislation committee. The email from Grech showed his desire to be in the limelight, telling Turnbull 'it is important that any inquiry involve only me from Treasury', and 'I am happy for you to start using my name in parliament or in media interviews'. Towards the end, he oozed: 'I really do believe there is meat in this one. Swan is probably more exposed than Rudd ... Perhaps we should talk to sort out next steps.' To which Turnbull replied that they should 'get together w[ith] Eric and we are on the same track in terms of a committee'.

106 A top-secret meeting was set up in Sydney for Friday, 12 June, ahead of the midwinter ball the following Wednesday, and the 19 June hearing. Grech insisted it could not be at Parliament House, and there could be no staffers present. In the end, Turnbull chose Lucy's plush office on top of the old post office at Potts Point. Abetz and Stansfield were there too. Grech showed them a copy of the email from Charlton, and Abetz and Turnbull scribbled down the contents.

107 Turnbull had fallen for Grech hook, line and sinker. In the process he had missed so many cues. Firstly, Grech was not a whistleblower acting on principle in the public interest; he was a serial rule-flouter conspiring against his government who made no secret of his readiness to lie. On one occasion Grech suggested that Turnbull ask Rudd in question time: 'Is it not the case that Mr Godwin Grech, who is apparently associated with the ACT branch of the ALP, was despatched to do a deal to look after Mr John Grant? Is this not a stark illustration of the gross politicalisation [sic] of the Treasury?' Such a transparently dishonest ruse, with a touch of grandstanding, should surely have rung alarm bells.⁴⁷ Secondly, Grech was

desperately unwell. He suffered from a degenerative bowel disease that had almost killed him five years earlier, and had lost 20 per cent of his body weight by the time he appeared at the Senate committee, weighing in at 44 kilograms. He was chronically depressed, although he had not been diagnosed yet. And he was stressed—he claimed it was through overwork and bad management, but clearly the risk of getting caught out was adding to the pressure. It was hard enough watching the pained, vulnerable man give evidence on television. How much harder for Turnbull to have sat down with Grech, eyeball him, and then gamble his political career—not to mention the responsibility entrusted him by his party—on this unstable person. As Brendan Nelson remarked privately about Turnbull: 'He can read a balance sheet but he can't read a human being.'⁴⁸ Thirdly, with the benefit of hindsight, was Grech's fundamental proposition really that compelling? That the PM, particularly, would risk everything for the sake of a second-hand ute? Only a pretty feverish mind could get worked up about it.

108 Within weeks of the uproar, Grech had been stood down by Treasury and checked himself into a psychiatric ward, from where he continued to give interviews and issue self-serving statements. Grech cut such a pathetic figure, there was a degree of sympathy for him. He was never charged, due to his health, and ultimately received a six-figure payout. On top of everything else, Turnbull had to deal with the accusation that he had thrown Grech to the wolves. Turnbull himself released the 5 June email from Grech to show that it was Grech who proposed the 19 June hearing. Turnbull added: 'With the benefit of hindsight, one regrets ever having met Mr Grech.'⁴⁹

109 Turnbull the inexperienced politician had done exactly what his critics had always thought he would do: he had flamed out spectacularly. He was now fair game. Turnbull was given free character analysis in acres of media commentary: his penchant for cloak-and-dagger intrigue, going back to Costigan and Tourang; his desire to do everything himself, rather than delegate the dirty work to a backbencher who could be cut loose if necessary—a 'danger mouse', like Heffernan was to Howard. 'Why doesn't Turnbull have one?'

wrote journalist Annabel Crabb. 'Simple: he's his own, and always has been.'⁵⁰ Most scathing perhaps was an anecdote offered by *Herald* political editor Peter Hartcher:

(110) When Malcolm Turnbull took the leadership of the Liberal Party, Paul Keating decided he had some useful insights into the man. He decided to offer them to Kevin Rudd. The previous Labor prime minister told the incumbent Labor prime minister on the phone that ... Rudd had to understand three key things about Turnbull. First, he should know that Turnbull was brilliant. Second, that Turnbull was utterly fearless. At this point Rudd, an irritated Rudd, demanded to know, 'Is there any good news here?' Keating replied with his third point: Turnbull has no judgement. Keating must be feeling vindicated today.⁵¹

(111) Looking back, Arthur Sinodinos says he found it surprising at the time how close Turnbull and Grech had become, and that Turnbull was simply entranced by the possibility he might be able to knock off the PM and the treasurer at once: 'Frankly unless he had some reason to question the stuff he was given, he thought he had them, and it didn't work out that way.' Asked whether Turnbull had some responsibility for 'grooming Grech', to his detriment, Sinodinos says only that both Turnbull and Grech paid a very heavy price for the OzCar affair, 'and Godwin continues to pay a high price'.⁵² Observing from a distance Nick Greiner draws parallels with his own downfall in the Terry Methcull affair, a botched attempt to induce the then independent State MP to leave parliament, which ultimately ended Greiner's premiership: 'Malcolm is not devious. He's up-front. When he tried to be devious, it was a fuck-up! He does remind me of myself. Trying to play politics in the low sense of the word, didn't work.'⁵³

• • •

(112) Turnbull was mortally wounded—someone dubbed him 'Malcolm Terminal'—and the worst thing was it was entirely self-inflicted.

With the threat of an adverse privileges committee finding hanging over his head—which could have seen Turnbull and Abetz jailed—Abetz apologised to the parliament for his role in the whole affair. He also made clear he'd told Turnbull to go after Swan, not Rudd. Turnbull made a statement to the federal police and was cleared of any wrongdoing. But he suffered the biggest single fall in satisfaction for a leader of the opposition in the history of Newspoll surveys.⁵⁴ On the preferred PM measure, Rudd now led Turnbull by 48 points. In the leadership stakes, Peter Costello and Joe Hockey were preferred to Turnbull. Alternative leaders were canvassed regularly from August 2009 onwards. Andrew Robb, Hockey and Abbott were all mentioned. Where Hockey was keen to distance himself from the whole business, Abbott was remarkably forthright and occasionally convincing in many appearances defending Turnbull over OzCar, trying to turn the debate back onto the government—Abbott perhaps was enjoying it a bit too much.

(113) Turnbull's position was so dire it won him some support. He shone in the *Australian Story* program, with its fireside chats and sympathetic rendition of his lonely upbringing—though the most gripping scenes were of his office melting down. A fortnight later, Turnbull did very well on the ABC's Q&A program, and was particularly relieved when, after the obligatory OzCar question, the youthful audience was tired of the whole sorry saga, wanting to get onto issues that concerned them. At times he again looked like a leader. Turnbull could not marshal his forces, however. The party was fracturing beneath him: over the alcopops tax, over charging asylum seekers the cost of their detention, and most deeply over climate change.

(114) Turnbull had wrested the leadership from Nelson over the party's stance on climate. Given Turnbull was the minister who got an emissions trading scheme through the Howard Cabinet in 2007, and he accepted the science, he felt bound to support it. In fact, he was convinced it would be electoral suicide for the Coalition to oppose it. Rudd would call a double-dissolution election and win. This view was widely accepted. Abbott himself had said he did not think it was possible for the Coalition to go any 'brownier than Howard' on

climate, and in July wrote an op-ed arguing the party had no option but to support an ETS.⁵⁵

115 The federal government had a choice of negotiating with the opposition to get the ETS through parliament, or negotiating with the Greens. Rudd chose the former and shut the Greens out altogether. He had already carved climate change out of Peter Garrett's portfolio because he didn't want a 'greenie' handling the policy, appointing Penny Wong instead.⁵⁶ Already in May 2009, Wong was well aware of the danger of an outcome like the republic referendum, where 'loss of support from the left and the right, for totally different reasons, meant you ended up with nothing'.⁵⁷ That is exactly what happened.

116 In August, the Coalition voted against the government's ETS, flagging it would seek to negotiate amendments when it was reintroduced three months later. Turnbull had commissioned research on an alternative, a so-called baseline-and-credit scheme to cut emissions, but it got little traction amid the OzCar furore. It was actually a delaying tactic. In September, shadow climate spokesman Andrew Robb threw a spanner in the works by stepping down from the shadow cabinet, admitting publicly that he was suffering from depression. Industry spokesman Ian Macfarlane took over the ETS negotiations with the government, working alongside Turnbull. At the end of the month, Turnbull flew to London to deliver a speech at the centre-right think tank Policy Exchange, on 'Progressive politics in Australia and the UK', and meet with British Conservative Party leader David Cameron, who was pushing the Tories towards a progressive position on environment and climate that would help it into office in 2010. Cameron's slogan was 'Vote blue, go green'—he wore green ties, rode a bike, and had a wind turbine on his home.⁵⁸ Turnbull was inspired.

117 Turnbull got back home to news that two-thirds of his backbench were against him on negotiating with the government over the ETS before the Copenhagen climate summit that December. *The Australian's* Peter van Onselen, one of Turnbull's preselectors in the battle for Wentworth, had surveyed every Liberal backbencher on the ETS and found that, contrary to most media coverage, it

was not opposed by just a sprinkling of disaffected climate-deniers like Wilson Tuckey or Julian McGauran or Cory Bernardi (who had been sacked early that year by Turnbull). Only twelve out of fifty-nine backbenchers supported the shadow cabinet position. One unnamed senior Liberal claimed Turnbull had never taken the policy to the party room because he knew it would lose.⁵⁹ The chips were down. In an Adelaide radio studio on 1 October, Turnbull issued a surprise ultimatum: 'I will not lead a party that is not as committed to effective action on climate change as I am.' Turnbull's press secretary, Mark Westfield, was shocked—this was not in the script. An *Australian* editorial reckoned it was a brave call: 'They're not as committed, and never were, which leaves [Turnbull] in an invidious position.'⁶⁰

118 The cat was out of the bag, but Turnbull by now had nothing to lose. His polling had never recovered from Utegate. His leadership was extremely fragile. He might as well stand up for something he believed in. Some thought he was looking for an elegant way out, one eye on the history books. One thing was certain: the chance of a bipartisan approach to climate change would not come again.

119 Tony Abbott was heading in exactly the opposite direction. Only the day before, he had been at a Liberal Party function in Beaufort in rural Victoria—about as far from London as you could get—and found himself facing question after question about the government's ETS. He called for a show of hands; hardly anyone supported it. Abbott got a great reaction when he admitted he was sceptical, famously saying the idea the climate science was settled was 'absolute crap', and his own thinking started to shift.⁶¹ A long conversation with Nick Minchin during the Comcar trip back to Melbourne the next day crystallised his new thinking: 'Voting for the legislation would fracture the Coalition and split the Liberal Party; opposing the legislation would give the opposition the chance to campaign against Labor's giant new tax on everything.'⁶² Abbott was not yet running for the leadership, but he was set against the policy. Hearing Turnbull's comments in Adelaide, he thought: 'Mare, you've just given an ultimatum to the party and you may not like the way it responds.'⁶³ He tried persuading Turnbull 'in phone conversations,

in shadow cabinet discussions, during a meal at his home and even on morning bike rides around the lake in Canberra. Malcolm was easy to talk to but impossible to persuade that this was becoming a slow-motion train wreck.⁶⁴

(120) As he was battling his own party, Turnbull was being wedged hard in parliament by Rudd, who drew out the process to maximise division in the Coalition. It worked too well, destroying Turnbull and the policy—a pyrrhic victory. Looking back, half the Labor Cabinet acknowledges the wedge strategy was a mistake. Julia Gillard said ‘we should have thrown our arms around Turnbull, and not sought to keep taking a chip out of him.’⁶⁵ Greg Combet, who represented Wong in the House, and who would later become climate change minister under Gillard, wrote that

(121) most days before question time, the prime minister’s office was urging me to go hard at then opposition leader Malcolm Turnbull over climate change. . . . I resisted Rudd’s office, because its advice was in contradiction to our efforts to negotiate the CPRS [carbon pollution reduction scheme, aka ETS] with Turnbull—‘Why shit on someone you’re trying to do a deal with?’ I asked.⁶⁶

(122) Negotiating a set of amendments with Ian Macfarlane, Wong wasn’t sure whether she was meant to be clinching a deal with the opposition or crashing it. When asked, Gillard said, ‘Penny, I don’t bloody know.’⁶⁷ Wong later said she regretted how the government had made bipartisanship on climate more difficult to achieve by constantly attacking Turnbull and trying to embarrass him with his own party.⁶⁸ Having sidelined the Greens, Labor was trying to smash the Coalition. In late November, the leader of the House, Anthony Albanese, told the Caucus: ‘We’ve now got the Libs on the canvas and they are more internally split than any major political party since the great Labor Split of the 1950s.’⁶⁹

(123) Paul Kelly’s *Triumph and Demise* gives a masterful account of the fall of Turnbull and the rise of Abbott, an event he describes as ‘the great fulcrum of Australian politics, the point at which the system shifted, leaving a confused political class and media shaking

their heads in disbelief’.⁷⁰ A Coalition party room meeting on 24 November 2009, held to finally endorse the Wong–Macfarlane deal over the ETS, got the ball rolling. Turnbull and Macfarlane spruiked the pro-industry concessions they had wrung out of Labor, particularly some \$7 billion in handouts for coal-fired power generators, coal miners, LNG exporters and other big polluters. There was so much compensation that the architect of the ETS, economist Ross Garnaut, thought it lineball whether such a scheme was worth bringing in at all. The Greens believed the scheme was now so brown that it ‘locked in failure’—it was actually worse than doing nothing. But for Andrew Robb, now on the backbench, the scheme was nowhere near brown enough. Robb felt the deal was a total sellout, a stitch-up with Labor. He feared it would sail through the party room because most of his colleagues would not understand the detail. Having spent almost a year working on the policy, he was the only one who could challenge the deal, and felt obliged to tell the party what was going on. Working up a speech ahead of the meeting, he kept his intentions to himself: ‘I knew that if Malcolm had any forewarning before the party room meeting, I would have found myself speaking last.’ As the meeting approached its second hour, Robb got anxious he would not get a chance to speak until it was too late to influence the outcome:

(124) I ripped off a piece of paper—I didn’t feel that good about doing this, but the stakes were high for our country—and wrote to Malcolm, ‘The side effects of the medication I am on now make me very tired. I’d be really grateful if you could get me to my feet soon.’⁷¹

(125) When he got the note, Turnbull gave Robb a nod, and soon he was up. He ripped the deal apart: industry had not got enough, it would export jobs and emissions, it would raise sovereign risk issues, and it went nowhere near meeting what the party room wanted. ‘You could hear a pin drop,’ Robb wrote. ‘I got a standing ovation, which doesn’t happen often in the party room.’ Turnbull was rocked. After the meeting he would ring Robb and give it to him—Robb

called it 'the most uncomplimentary character assessment that I've ever had'.⁷² Joe Hockey thought it the worst act of treachery he'd seen in twenty years of politics, but Robb was unrepentant: 'I think [Turnbull] had chosen me for that portfolio because I was a good bridge between the Right and the Left, and he thought the Right would listen to me but that I would do his bidding. He was wrong. I am my own man.'⁷³

126 The meeting went on for another six hours, but Robb's intervention had been decisive. The ground was now shifting under Turnbull. At the end there were thirty-five speakers counted for and forty against, but Turnbull took the unusual step of adding in the shadow cabinet (bound to support the policy but prevented from speaking in the party room) and decided he had a slim majority: forty-nine to forty-six. As the leader, he declared: 'I make the call.' After so many hours of debate, and with so much feeling against the ETS deal, Turnbull's call precipitated a crisis.

127 The next day, the Liberal party room considered a leadership spill motion, with Kevin Andrews the only candidate. Turnbull won it, forty-eight to thirty-five, but it was unconvincing, especially as Andrews was not a serious rival. Turnbull was vulnerable. Minchin and Abbott went to Turnbull and told him they would resign from the frontbench. When asked by Turnbull if he was clearing the way for a leadership challenge, Abbott said: 'My aim is to change the policy. If you change the policy then I will support you as leader.' Turnbull, to his credit, recognised he would lose all credibility if he abandoned support for the ETS, and chose to fight. Defiant, he gave an electrifying press conference: 'We must be a party committed to action on climate change. Anything else is irresponsible. This is about the future of our planet and the future of our children and their children. It is the responsible thing to do and it is the honourable thing to do.'⁷⁴

128 In all of Australia's wretched climate debate, a cavalcade of compromise and delay stretching back more than twenty years, no leader of a major party had put their job on the line over the issue in the way Turnbull did in 2009. It was heroic. Sadly, by the time he took a stand, Turnbull's authority was crippled by the Godwin Grech fiasco

129 At the end of 2009 there was also a savage undertow, according to one senior liberal who says Turnbull, like Rudd, had simply alienated too many of his colleagues. From the time he entered politics, Turnbull's backers had always told him that his hopeless inability to suffer fools was *the* barrier to him making it to the top. Turnbull made great strides and his behaviour as member for Wentworth had been exemplary, with one major exception that, ironically, his worst behaviour was reserved for his parliamentary colleagues:

130 From the time he became leader, one by one, he would give them a spray. He felt, you know, I'm now leading these guys, they're the shadow ministers, they're hopeless, they're fuckwits, they don't know anything, I know it all, and one by one he would sort of hang, draw and quarter them. I certainly subscribe to the idea that come the leadership spill in 2009, the issue of Malcolm's behaviour and demeanour was far more significant than climate change or any policy-related things. He'd basically burnt these people.⁷⁵

131 When it came to the crunch, four days later, it was surprising the leadership vote was so close. Expectations were that Joe Hockey, the most popular alternative, would win hands-down, and the party's machine men were working on it. But Hockey flummoxed all sides by proposing a free vote on the ETS—a Claytons position that was widely mocked. In the first three-way ballot, Abbott won thirty-five votes, Turnbull twenty-six and Hockey twenty-three. Knocked out, Hockey felt humiliated and betrayed: he believed Turnbull had assured him that if a spill motion was carried, Turnbull would not stand. Turnbull denied that outright, saying it was always his intention to stand, and he had made it clear both publicly and privately. His backers confirm it. Abbott knew straight away he was likely to win, given the groundswell against Turnbull. But in the final count there was just one vote in it: Abbott won forty-two to forty-one. Fran Bailey, a likely Turnbull backer, was sick. More telling was the result of a secret ballot held immediately afterwards on the ETS: the party opposed it by a wide margin of fifty-four votes

to twenty-nine, meaning that there were people backing Turnbull who didn't support his stance on climate change, but were simply too wary of Abbott. Over the next few years, as Abbott proved an extremely effective opposition leader, the numbers solidified behind him and the party was reunited.

132 In Paul Kelly's account, this was Abbott's defining objective: restoring the unity of the party. Abbott and Minchin believed not only that the Coalition would fracture but that the Liberal Party itself would split over the ETS. Turnbull believed that Minchin was leader of a revolt by climate sceptics who would simply not accept the view of the party majority and took the party hostage. Either way, it was a major turning point for Australian politics. Rudd was elated at Abbott's win, which only proved he had lost his bearings. Within months, after Copenhagen failed, and with his party urging him to dump the ETS and Abbott on the warpath, Rudd would duck the greatest moral challenge of a generation, shoving it off into the never-never. The longest honeymoon in Australian politics came to a crashing halt and he was ousted as PM within weeks, drowned in the backwash of the same wave that had pulled Turnbull under.

133 In a searing blog post just after his defeat, Turnbull let rip at the Coalition's new position on climate:

Any suggestion that you can dramatically cut emissions without any cost is, to use a favourite term of Mr Abbott, 'bullshit'. Moreover he knows it. It is not possible to criticise the new Coalition policy on climate change because it does not exist. As we are being blunt, the fact is that Tony and the people who put him in his job do not want to do anything about climate change ... The Liberal Party is currently led by people whose conviction on climate change is that it is 'crap' and you don't need to do anything about it. Any policy that is announced will simply be a con, an environmental fig leaf to cover a determination to do nothing. Tony himself has in just four or five months publicly advocated the blocking of the ETS, the passing of the ETS, the amending of the ETS, and if the amendments were satisfactory passing it, and now the blocking of it. His only

redeeming virtue in this remarkable lack of conviction is that every time he announced a new position to me he would preface it with 'Mate, mate, I know I am a bit of a weather vane on this, but ...'⁷⁶

134 Australia is stuck with that 'fig leaf' policy today—the first country to abolish a carbon price in favour of paying for emissions reductions out of consolidated revenue. When the ETS was put back to the parliament in February 2010, Turnbull crossed the floor to vote for it, watched by a morose Joe Hockey.

135 Turnbull was quite gracious about Abbott, personally, describing him as a 'front stabber'. He was less kind about Minchin. In April 2010, after he was overlooked for the frontbench, Turnbull announced he would not recontest Wentworth in the election due later that year. At fifty-six, time was not on his side, he admitted. Life with Lucy beckoned.⁷⁷ Three weeks later, Turnbull backflipped, a decision partly inspired by Labor's shock decision to dump the ETS, and partly by the several senior Coalition figures who helped him change his mind. One voice was particularly influential: Tony Abbott's mentor, Turnbull's old frenemy, John Howard. The day after he declared he would quit, Turnbull told Howard, 'I think I've done the wrong thing.' Howard replied cheerily: 'Change your mind—the party will be delighted and you'll increase your majority in Wentworth.' Howard said later: 'I was delighted he stayed. Perhaps some of his colleagues weren't, but I was. He adds a dimension.'⁷⁸ It was the old Howard tenacity: never give up.