This Bill follows on from the report of an expert working-group established in 2003 to review the issue of drug impaired driving in Western Australia.

The Road Traffic Act 1974 does not address drug impaired driving where the impairment falls short of ‘driving under the influence’ (section 63). Accordingly, one of the core offences in the proposed amendments is an offence of ‘driving while impaired by a drug’ (the proposed new section 64AB). The other core offence makes it an offence to drive or attempt to drive if you have a prescribed illicit drug in your oral fluid or blood (the proposed new section 64AC).

The amendments include a number of provisions to facilitate proof of the core offences. Amongst these provisions is a new requirement for standardized impairment assessment procedures to be conducted by the WA Police. These procedures will be governed by regulations. Also relevant are new provisions to govern the collection and assessment of oral fluid samples. The Road Traffic Act contains provisions to facilitate the use of expert evidence; the proposed changes include consequential amendments to those provisions.

The changes include new provisions aimed at the rehabilitation of offenders with drug-related problems. Sentencing options relating to the new offences are constrained in that certain options available under the Sentencing Act 1995 are mandatory.

A driver who is drug-impaired is an immediate road safety hazard. The amendments therefore also include power for a member of the Police Force to confiscate vehicle keys where the officer has reason to suspect that the driver has committed a traffic offence involving alcohol or drugs.

Clause 1 – Short Title

A formal clause titling the Act.

Clause 2 - Commencement

The formal part of the Act commences the day after the day on which the Act receives the Royal Assent.

The substantive parts of the Act come into operation on a day, or on some days, to be fixed by proclamation.

Clause 3 – Part 2 of the Bill amends the Road Traffic Act 1974

The proposed section states that the amendments in this Part of the Act are to the Road Traffic Act 1974 (clause 23 in Part 3 amends the Young Offenders Act 1994).
Clause 4 – 51 amended

This amendment will cause the cancellation of a probationary licence held by a person who offends against the proposed new section 64AC (there is no automatic disqualification relating to licences generally for a first offence against the proposed section 64AC).

Clause 5 – Section 63 amended

Section 63(3) shows offences that are deemed to be offences against section 63 for the purposes of determining whether an offence against section 63 is a first, second, third or subsequent offence. The proposed amendment adds offences under the proposed section 64AB and section 67AA to those offences.

Section 63(4) sets out certain procedural safeguards for a person who is charged under section 63; notably the person making the charge has a duty, when the person is charged, to inform him or her of his or her right to be examined by a medical practitioner of his or her choice and also his or her right to communicate with a legal practitioner and another person that the person charged nominates. Parliamentary debates make it clear that the assumption underlying this provision was originally that the rights were needed where a person is under arrest or otherwise in custody when they are charged. The proposed section 63(4a) makes that assumption explicit. The need to make the assumption explicit arises because there is an expectation with the new core offences that people will not be under arrest or otherwise in custody when they are charged. Further, the involvement of medical personnel in some of the proposed procedures would render the warning redundant; this is reflected in the proposed section 63(4b), which says that the right to be examined does not arise where blood is taken under certain sections.

Section 63(6) sets out other provisions that a person may be charged under instead of s.63. The proposed amendment adds the proposed sections 64AB and 64AC to those provisions.

Clause 6 – Sections 64AB and 64AC inserted

This clause inserts the proposed section 64AB. That section sets out the core offence of ‘driving while impaired by a drug’, and consequential matters. The clause also inserts the proposed section 64AC. That section sets out the other core offence of ‘driving with a prescribed illicit drug in one’s oral fluid or blood’ and consequential matters.

Section 64AB

The proposed subsection section 64AB(1) sets out the offence of driving while impaired by drugs. The word “drug” is in the plural for consistency with section 63 (by virtue of s.10 of the Interpretation Act 1984 the singular encompasses the plural and vice versa).

The proposed subsection (2) sets out the level of the penalties relating to (1). The level of the penalties shows that the offence is to be on a par with the offence of driving under the influence of alcohol and/or drugs (section 63).

The proposed subsection (3) sets out offences that will be deemed to have been prior offences under this section.
The proposed subsection (4) states the relationship between the proposed section 64AB and the current section 63(4) and the proposed sections 63(4a) and (4b). The proposed subsection (4) extends the rights under section 63(4) to a person charged under 64AB.

The proposed subsection (5) sets out four facts the proof of which may lead to the alleged offender being convicted. Subject to other facts before the court (see for example subsection (8)), proof of all four facts will suffice to convict.

Under the proposed subsection (6), if the evidence before the court is sufficient to convict a person of driving under the influence of drugs and/or alcohol (section 63), or driving with a prescribed illicit drug in one’s oral fluid or blood (the proposed section 64AC), the court may so convict.

Under the proposed subsection (7), if it is proved that a person had a drug in his or her body within 4 hours of the alleged offence, he or she is deemed to have had the drug in his or her body at the time of the alleged offence, unless the contrary is proved.

The proposed subsection (8) sets out a defence based on provision of the drug in a therapeutic context and for a therapeutic purpose, lack of information in the packaging of the drug (where the drug is packaged) along with a reasonable lack of awareness of the likely result of effects of the drug.

The proposed subsection (9) confirms the relationship between the proposed subsection (5) and the proposed subsection (8).

Section 64AC

The proposed subsection 64AC(1) sets out the offence of driving or attempting to drive with a prescribed illicit drug in one’s oral fluid or blood.

The proposed subsection (2) sets out the level of the penalties relating to (1). The level of the penalties shows that the offence is to be on a par with the offence of driving with a percentage of alcohol in one’s blood of greater than or equal to 0.05% but less than 0.06% (section 64AA).

The proposed subsection (3) sets out offences that will be deemed to have been prior offences under this section.

Under the proposed subsection (4), if it is proved that a person had a drug in his or her body within 4 hours of the alleged offence, he or she is deemed to have had the drug in his or her body at the time of the alleged offence, unless the contrary is proved.

The proposed subsection (5) shows that it is not a defence to a charge under this section that the person consumed one of the relevant prescribed illicit drugs thinking that it was another drug from what might loosely be thought of as the category of illegal drugs.

Clause 7 – Amendments to section 65

Section 65 inserts some new definitions for the purposes of section 59B(5) and sections 63 to 73 inclusive.
“Approved device” will appear in sections 66D(4), 70(5e) and 72(1)(bd). Such a device is a device approved by the Minister for establishing whether there is a prescribed illicit drug in a person’s oral fluid.

“Authorized drug tester” will appear in the proposed sections 66D, 69D, 70(3b)(k), in the words that conclude section 70(3b), and the proposed section 70(3d). It is the term for a person authorized by the Commissioner of Police to take and test oral fluid samples for the purposes of the proposed section 66D.

“Conduct” is used in the proposed section 64AB and will appear in section 70. The definition shows that the word “conduct” encompasses the notions of ‘behaviour’ and ‘demeanour’.

“Driver assessment” is used in the proposed sections 64AB, 66A, 66B, and 67AA, and will appear in section 70. It is the term used for the process of assessment carried out by a member of the Police Force before deciding whether to subject to a blood test a person suspected of driving while impaired by a drug. The details of the process will be determined by regulations.

“Drug” will appear in sections 63, 64AB, 64AC, 65, 66A, 70 and 72. The definition is objective in that it refers to the effect of a substance upon “a person” (as opposed to the subjective experience of the person who is alleged to have committed the offence). The definition also refers, in paragraphs (a) and (b), to substances the consumption of which Parliament has established is deleterious; those substances are always drugs for the purposes of the relevant sections.

“Drug testing” in relation to oral fluids means testing for prescribed illicit drugs.

“Preliminary oral fluid test” refers to an initial screening test for the presence of prescribed drugs in a driver’s oral fluid, which test is administered to a driver of a vehicle to ascertain whether he or she should be subjected to a further, more accurate test. It will appear in (and is required under) sections 66C(1) and (3). It will also appear in the proposed sections 66D(1), 70(5c), 71A(6), 72(1)(bc) and 72(2)(d).

“Prescribed illicit drug” means one of the substances in the definition of “drug” which has been listed in regulations. It will be an offence under the proposed section 64AC to drive and have such a drug in one’s oral fluid or blood. The term will also appear in the proposed sections 66D and 69B.

Clause 8 – Section 66 amended

This inserts a power in section 66 for a member of the police force when testing for alcohol to require a person to leave their vehicle for the purposes of providing a breath sample. The aim is to minimize risks in administering such tests – notably where the vehicle cabin is not readily accessible. A parallel provision is proposed for the oral fluid tests.

Subsections (16) and (17) are being removed and replicated elsewhere (the new section 66F).

Clause 9 – Sections 66A – 66F inserted

This clause inserts the proposed sections 66A – 66F.
Aspects of the structure of these proposed sections broadly reflect aspects of section 66.

**Section 66A**

Sections 66A and 66B set out the power to require a person to undergo a driver assessment and submit to subsequent blood tests, as well as consequential matters.

Under the proposed subsection 66A(1), a member of the Police Force may require a driver, or a person the officer has reasonable grounds to believe drove or was in charge of a motor vehicle, to undergo a driver assessment. The officer must also have reasonable grounds to believe that, while the person was driving or attempting to drive, the person was impaired by something (other than alcohol alone) affecting the person’s capacity to drive a motor vehicle.

The proposed subsection (2) also allows a member of the Police Force to require a driver assessment. The officer must have reasonable grounds to believe that a motor vehicle has been an immediate or proximate cause of personal injury or property damage and that the suspect may have been the driver. The officer must also have reasonable grounds to believe that the suspect was impaired by something (other than alcohol alone) affecting the person’s capacity to drive a motor vehicle.

The proposed subsection (3) allows a member of the Police Force to require a person to remain in a place for the purpose of a driver assessment.

The proposed subsection (4) allows a member of the Police Force to require a person to leave the vehicle to undergo assessment. Clause 8 will insert a parallel power in the context of breath samples for blood alcohol tests.

The proposed subsection (5) requires a person to undergo a driver assessment in accordance with the directions of a member of the Police Force.

The proposed subsection (6) sets limits to the circumstances in which a person may be required to undergo assessment. A person must not (under subsection (6)(a)) be required to undergo assessment if it appears to the officer that the assessment will not take place within 4 hours of the suspected offence or (under subsection (6)(b)) that the person’s physical condition renders the person incapable of undergoing the assessment.

The proposed subsection (7) requires a member of the Police Force who carries out a driver assessment to carry it out in accordance with relevant regulations.

**Section 66B**

The proposed subsection 66B(1) applies after an assessment, a failed assessment or, when under the proposed subsection 66A(6)(b), an assessment cannot be carried out. If it appears to a member of the Police Force from the assessment that the person is impaired, if the person refuses or fails to provide a sample, or the officer cannot take a sample because of subsection 66A(6)(b), the officer may require the person to accompany the officer and wait so as to provide blood or urine samples to a medical practitioner or registered nurse. The sample is to be provided to the medical practitioner or registered nurse of the person’s choice.

The proposed subsection (2) allows a member of the Police Force to compel the taking of a blood sample where a person is unable to comply with a requirement to provide a sample made under the proposed subsection (1).
The proposed subsection (3) provides that a member of the Police Force has a duty to facilitate the provision of medical assistance where a person is apparently unconscious or seriously injured.

The proposed subsection (4) sets a time limit for a blood or urine sample under the proposed subsections (1) and (2). No sample may be required if it appears to a member of the Police Force that the sample will not be taken within four hours of the suspected offence.

The proposed subsection (5) sets out when the proposed subsection (6) (which gives a member of the Police Force power to require blood or urine samples) will operate. The proposed subsection (5) says that (6) will apply where a person does not nominate a medical practitioner or registered nurse for sampling purposes.

The proposed subsection (6) allows a member of the Police Force to nominate a medical practitioner or registered nurse for sampling purposes and, for the purposes of having that person collect a sample to require the suspect to go with him or her and wait.

Section 66C

The proposed section 66C deals with the first stage of the proposed procedure by which a person may, without cause, be tested for the presence of the prescribed illicit drugs in their oral fluid and blood.

The proposed subsection 66C(1) gives a member of the Police Force power to test a person he or she has reasonable grounds to believe was driving or in charge of a vehicle. The test in question is the “preliminary oral fluid test” (which phrase is one of those defined and inserted in section 65 by clause 7).

Under subsection (2) a member of the Police Force will be able to call upon a driver to stop a vehicle (failure to do so is an offence under section 53) and may direct the driver to a place (failure to obey a direction is an offence under section 67A(1)).

The proposed subsection (3) also allows a member of the Police Force to require a test. The officer must have reasonable grounds to believe that a motor vehicle has been an immediate or proximate cause of personal injury or property damage and that the suspect may have been the driver or person in charge.

Proposed subsection (4) will allow a member of the Police Force to require a person to wait at the place where the requirement under subsection (1) or (3) is made.

A member of the Police Force will, under the proposed subsection (5), be able to require a person to leave their vehicle to undergo such a test. This is similar to the power that will be inserted in section 66 by clause 8.

The proposed subsection (6) makes it mandatory to undergo such a test in accordance with the directions of a member of the Police Force.

A member of the Police Force is to carry out such a test in accordance with the relevant regulations, according to the proposed subsection (7).

Section 66D
The proposed section 66D deals with the second stage of the proposed procedure by which a person may, without cause, be tested for the presence of the prescribed illicit drugs in their oral fluid and/or blood.

The proposed subsection 66D(1) allows a member of the Police Force to require a person to provide a further sample of oral fluid for testing where it appears to the member of the Police Force that the person has failed or refused a preliminary oral fluid test. If that happens the person may be required to accompany the member of the Police Force to a place and to wait at that place.

The proposed subsection (2) says that a person so required under subsection (1) shall provide a sample in accordance with the directions given by an “authorized drug tester” (which phrase is one of those defined and inserted in section 65 by clause 7).

Time limits are imposed by the proposed subsection (3) as to when a person may be required to provide such a sample. These time limits, 4 hours, reflect those under the proposed section 66A(6). Another limit is that no requirement is to be made where it appears to a member of the Police Force that the person is incapable of complying.

An authorized drug tester must, under the proposed subsection (4), collect the relevant samples and conduct (using an “approved device” – one of the proposed new defined terms in section 65) the relevant tests in accordance with regulations.

Section 66E

The proposed section 66E provides a default blood testing mechanism for where a person is unable or unwilling to provide a sample of oral fluid.

The proposed subsection 66E(1) follows on from the proposed section 66D(3)(b). Under the earlier provision, a member of the Police Force may be prevented from requiring a person to give a sample. If that happens the member of the Police Force may require the person to nominate a medical practitioner or registered nurse to take a sample of their blood. For the purposes of obtaining such a sample, the member of the Police Force may require the person to accompany him or her to a place and to wait there.

If the person is unable to make such a nomination, the proposed subsection (2) allows a member of the Police Force to cause a medical practitioner or registered nurse to take a sample of their blood.

A member of the Police Force shall, under the proposed subsection (3), facilitate the provision of medical assistance to a person who is apparently unconscious or seriously injured.

A time limit is set under subsection (4) for the taking of a sample under this section. No such sample may be taken or provided unless it appears to the member of the Police Force that it will happen within 4 hours after the time the relevant use of a vehicle is believed to have taken place.

A person may opt to give a sample of blood, rather than a sample of oral fluid, when required under the proposed section 66D(1) to give such an oral fluid sample. Subsection (5) will allow this.
The proposed subsection (6) deals with two sets of circumstances. The first of these is where a person fails to nominate a medical practitioner or registered nurse when given the opportunity to do so under subsection (1). The second is where such a nomination is made but, because of the particular circumstances, the person nominated cannot or will not act. In such circumstances the member of the Police Force may make such a nomination and may require the suspect to accompany him or her to a place and to wait there for sampling purposes.

Section 66F

Section 66F establishes the legal position of a medical practitioner or registered nurse acting under section 66, 66B or 66E.

The proposed subsection (1) authorizes the taking of samples as envisaged by the relevant sections.

The proposed subsection (2) stops legal action against a doctor or nurse if the action is concerned with no more than the fact that a sample was taken under section 66, 66B or 66E.

Clause 10 – Sections 67AA and 67AB inserted

This clause inserts the proposed sections 67AA and 67AB before the existing section 67A. The proposed section 67AA deals with where people fail to comply with a requirement under section 66A or 66B. The proposed section 67AB deals likewise with sections 66D and 66E.

Section 67AA

The proposed subsection (1) defines the word “requirement” as it appears in this section. It means a requirement made by a member of the Police Force under section 66A or 66B.

It will be an offence under the proposed subsection (2) to fail to comply with a requirement. The proposed subsection (3) sets out the applicable penalties; they are equivalent to the penalties that are to be found in section 67 (which performs a comparable function with regard to section 66). The proposed subsection (4) sets out offences that will be deemed to have been prior offences under this section.

There is a defence under the proposed subsection (5) if a person satisfies a court that he or she had a good reason, other than a desire to avoid providing information that might be used as evidence, for failing to comply. The proposed subsection (6) gives a particular example of when the proposed subsection (5) might apply: a person will have a defence to a prosecution under subsection (2)(c) if the defendant satisfies the court that he or she attempted to provide urine having been required to provide a urine sample.

Section 67AB

The proposed subsection (1) defines the word “requirement” as it appears in this section. It means a requirement made by a member of the Police Force under section 66D or 66E.

It will be an offence under the proposed subsection (2) to fail to comply with a requirement. The proposed subsection (3) sets out the applicable penalties; they are equivalent to the penalties that are proposed in relation to section 64AC. The proposed subsection (4) sets out offences that will be deemed to have been prior offences under this section. There is a defence under the proposed
subsection (5) if a person satisfies a court that he or she had a good reason, other than a desire to avoid providing information that might be used as evidence, for failing to comply.

Clause 11 – Section 67A amended

Section 67A makes it an offence to fail to comply with a requirement made pursuant to section 66, although it does not apply to a requirement that is made under certain specified provisions.

The proposed amendments will mean that the substance of section 67A also applies to proposed sections 66A to 66E; it will be an offence to fail to comply with a requirement made under those sections.

The provisions to which section 67A does not apply will include three of the proposed provisions (section 66C(2), section 67AA(2) and section 67AB(2)). It will, however, be an offence to breach one of those three provisions. Those provisions are not dealt with in section 67A for reasons of consistency with other provisions; the terms of the proposed sections 67AA(2) and 67AB(2) are similar to those in section 67(2) and section 66C(2) is similar to section 66(1aa).

Clause (2) makes amendments relating to what offences are to be deemed as prior offences as far as other offences in this context are concerned.

Clause 12 – Section 69 amended

Section 69 is a procedural and interpretive provision that deals with the taking and handling of blood samples. The proposed amendment will apply that existing provision to blood samples taken under the proposed sections 66B and 66E.

Clause 13 – Section 69A amended

Section 69A is a procedural and interpretive provision that deals with the collection and handling of urine samples. The proposed amendment will apply that existing provision to urine samples taken under the proposed section 66B.

Clause 14 – Section 69B inserted

This clause will insert a provision in similar terms to sections 69 and 69B, which provision will deal with oral fluid samples.

Clause 15 – Section 70 amended

Section 70 deals with evidential issues.

Subclause 15(1)

Subclause (1) will amend section 70(3a). The proposed amendment will allow evidence to be given as to the set of four facts in the proposed section 64AB(5) (the proof of which may lead to
the alleged offender being convicted). It will also allow evidence of the provision of oral fluid samples within the required period and the testing of those samples and the results of those tests.

Subclause (1)(a) will insert a reference to the proposed section 64AC into the introductory words of the subsection; this is needed because the substance of the proposed section 64AC does not fall into the broad descriptive terms found there.

Subclause (1)(b) will insert the words “or impaired by” – a reference to the proposed section 64AB - into the introductory words of the subsection.

Subclause (1)(c) will insert paragraphs (d), (e), (f), (g) and (h) into section 70(3a). The paragraphs give the particulars of the subjects concerning which evidence may be given. The terms of the first three paragraphs reflect the set of four facts in the proposed section 64AB(5) (the proof of which may lead to the alleged offender being convicted of driving while drug impaired). The last two paragraphs deal with the provision of oral fluid samples and the testing of the samples.

### Subclause 15(2)

Subclause (2) will amend section 70(3b). That subsection provides a list of people from whom a certificate certifying a specified matter is prima facie proof of what it certifies. The subsection also facilitates proof that the person signing was appropriately qualified or held the appropriate position.

Subclause (2)(a) will add paragraphs (f) to (k) inclusive. Paragraphs (a) to (e) already allow the use of certificate evidence. Such a certificate is prima facie proof of the facts that it certifies. The proposed paragraph (f) will allow the use of certificate evidence given by a drugs analyst and might apply relating to a number of offences (including current offences) in the Act that involve drugs. Paragraphs (g), (h), (i) and (j) will allow the use of certificate evidence given by an approved expert or a member of the Police Force. Such a certificate will relate to the proposed means of proof that is set out in the proposed s.64AB(5) or to the observations of a member of the Police Force relating to a “driver assessment”. Paragraph (k) will allow the use of certificate evidence given by an authorized drug tester in proceedings relating to the presence of prescribed illicit drugs in oral fluids or blood.

Subclause (2)(b) will amend the words at the end of subsection (3b). Those words reiterate the categories of people who may give certificates. Expanding upon the categories here is a consequence of expanding upon them earlier in the provision (i.e. inserting paragraphs (f) to (k) - see subclause (2)(a)).

### Subclause 15(3)

This inserts the proposed section 70(3d). This will allow the Commissioner of Police to sign to certify that a named person is an authorized drug tester. Such a certificate will be prima facie proof of what it certifies, without proof being needed of the signing. This is for use in proceedings under section 67A(1)(b) dealing with failure to comply with a requirement under section 66D(1).

### Subclause 15(4)
This subclause will insert the proposed subsections 70(5) and 70(5a) to 70(5e). Those subsections set constraints upon the use of certificates mentioned in the proposed subsections 70(3b)(f), 70(3b)(g) and 70(3b)(h) and upon the responses that can be made to such certificates by an accused.

Under the proposed subsection (5), no attempt must be made to have a certificate admitted as evidence (and such a certificate must not be admitted as evidence) unless it was served on the defendant at least 28 days before such an attempt is made. A defendant may, however, consent to the use of a certificate that was not so served.

The proposed subsection (5a) limits the defendant’s ability to challenge the contents of a certificate. The Defendant must give notice of challenge 14 days before use. However, despite this the court may give leave in the interests of justice for the defendant to challenge the contents of the certificate.

Under the proposed subsection (5b) a notice of challenge under the proposed subsection (5a) must specify the matter that is to be challenged or called into question.

The proposed subsections (5c) to (5e) set limits on the use that can be made of evidence concerning procedures relating to oral fluids. The policy underlying the provisions is to ensure that a prosecution does not commence unless evidence gathered during the relevant procedures is confirmed by a laboratory test.

Subclause 15(5)

The current section 70(6) limits the use that can be made of evidence that a person provided a breath sample under the Act, and of any indication provided by the test. Use can only be made of such information in proceedings for unlawful arrest and for an offence under section 67. The proposed amendment to section 70(6) extends the proceedings to which such information may be used to include proceedings under the proposed sections 64AB and 67AA.

Subclause 15(6)

This subclause amends subsection 70(7). That provision defines terms for the purposes of section 70. The proposed amendment will add a definition of “approved expert” that defines that term to mean a qualified clinical pharmacologist approved by the Minister for the purposes of section 70, with the approval published in the Government Gazette.

Subclauses 15(7) and (8)

These subclauses insert the words “and” and “or” in a number of list-like provisions to assist with ease of comprehension.

Clause 16 – Sections 71A and 71B inserted

This clause inserts the proposed sections 71A and 71B. The former provision makes it an offence to use as the basis of a DNA test a sample of certain bodily fluids supplied under certain sections. The latter provision aims to limit use of motor vehicles by people whose consumption of drugs or alcohol (or drugs and alcohol) makes them a hazard to other road users.
Section 71A

The proposed subsection (1) defines the word “sample” by way of reference to the giving of a sample of blood, urine or oral fluid to a member of the Police Force under section 69, 69A or 69B.

The proposed subsection (2) makes it an offence to use a sample to obtain a subject’s DNA. The proposed penalty is 12 months imprisonment.

Section 71B

The proposed subsection (1) allows a member of the Police Force to confiscate and retain vehicle keys. Alternatively the officer can require the keys to be given to a responsible person who the officer is satisfied can drive the relevant vehicle properly and who is in the company of the person from whom the keys are confiscated. A requirement under the power may be made of the offender and extends beyond keys that are on the offender’s person to keys in the vicinity of the offender. The officer must have a reason to suspect that the offender is driving or attempting to drive or has driven or attempted to drive the vehicle in contravention of sections 63, 64, 64AA or 64A, or the proposed section 64AB.

The proposed subsection (2) provides that in order to make a requirement under subsection (1), a member of the Police Force must be satisfied of certain things. Those things are that the requirement is necessary in the circumstances, and that it is in the interests of the offender, a person or the public. The offender need not have been charged for an officer to make such a requirement.

The proposed subsection (3) authorizes the member of the Police Force to take steps the officer thinks are appropriate and practicable to ensure that the relevant vehicle is secure and is not obstructing traffic.

The proposed subsection (4) clarifies the scope of subsection (3) by stating that steps under subsection (3) may include moving the vehicle to a more suitable place.

The officer in possession of the keys may retain them until a person requests their return under the proposed subsection (5). The officer must be satisfied that the person requesting the keys is entitled to lawful possession of the vehicle or is in the company of a person who is so entitled. In addition, the officer must be satisfied that the proposed driver holds an appropriate driver’s licence. Further, the officer must be satisfied that the person requesting the keys is responsible and able to drive the vehicle properly.

The proposed subsection (6) allows the member of the Police Force who has the keys to make the provision of a breath sample for testing (the term “preliminary test” is already defined in section 65), a part of the process under the proposed subsection (1)(b)(ii) or subsection (5)(c) by which the keys are or are not returned.

A person who requests the keys and does not receive them within 24 hours of the request may, under the proposed subsection (7), apply to a Magistrates Court for an order for the return of the keys.

It will be an offence under the proposed subsection (8) to contravene a requirement made by a member of the Police Force under the proposed subsection (1) or to obstruct a member of the Police Force exercising a power under that subsection or subsection (3) or (4).
Clause 17 – Section 72 amended

Section 72(1) allows the Governor to make regulations that are necessary or convenient for the purpose of carrying out or giving effect to certain provisions. Currently the Act allows for regulations to be made relating to the Act’s breath, blood and urine provisions. The proposed changes in subclause 17(1) will extend the scope of the regulations that may be made so that regulations may be made relating to the Act’s drug impairment and oral fluid provisions.

Section 72(2) allows the Minister to publish notices of approval in the Government Gazette relating to types of apparatus. Subclause 17(2) will extend the scope of that provision so that the Minister may publish notices relating to devices used in the context of testing for drugs in oral fluids.

The proposed new section 72(4) allows the Commissioner of Police to authorize a person to collect samples of oral fluid and to conduct drug testing on the samples for the purposes of section 66D. The proposed new section 72(5) sets out a threshold condition for the Commissioner to be able to do this. These provisions are inserted by subclause 17(3).

Subclause 17(4) inserts the word “and” in a list-like provision to assist with ease of comprehension.

Clause 18 – Section 72A inserted dealing with review of amendments

This clause inserts a provision that provides for a review process to take place concerning the efficacy of the provisions that are inserted. The review is to take place 12 months after the commencement of Part 2 of the legislation. The Minister is to carry out the review and is to prepare a report for Parliament. The Minister is to cause the report to be laid before each House of Parliament before 18 months after the commencement of Part 2 of the legislation.

Clause 19 – Section 75 amended

The existing section 75 deals with disqualifications. Courts are to tell the Director General when a conviction penalty involves disqualification. Where there is a disqualification and certain offences have taken place, additional information may have to be provided. The proposed amendment will mean that an offence against the proposed section 64AB or section 67AA will be one of those offences.

Clause 20 – Section 76 amended

Section 76 deals with the granting of extraordinary licences. For various offences there are time limits after disqualification within which limits an application cannot be made for an extraordinary licence. The proposed amendments will mean that an offence against the proposed section 64AB or section 67AA will be amongst those offences.

Clause 21 – Section 106 amended
The amendments to section 106 deal with offender management measures that apply in the context of sentencing. The measures are intended to apply where the offender has a serious drug problem. The aim is to direct the offender towards a programme that addresses such a problem.

The effect of the amendment to subsection (3)(c) is to delete the word “the” in the third place in which it appears and replace it with the word “a”. This is a grammatically preferable construction.

The effect of the amendment to subsection (4) is to delete the word “the” in the sixth place in which it appears and replace it with the word “a”. This is a grammatically preferable construction.

The proposed subsection (6) requires a court to order a pre-sentence report before sentencing a person who has offended against the proposed section 64AB.

The proposed subsection (7) sets out two possible components of a sentence for a first offence against the proposed section 64AB or section 67AA, and requires that one of those components is to be a part of the sentence. The court may order the offender to be released while it imposes a community-based order, within the meaning of the Sentencing Act 1995, with a programme requirement as a primary requirement of that order. Alternatively, if the offender is a young person (as defined in the Young Offenders Act 1994), the court may, subject to sections 50, 50A and 50B of that Act, make a youth community based order (within the meaning of that Act) imposing at least attendance conditions on the offender.

The proposed subsection (8) sets out three possible components of a sentence for a second or subsequent offence against the proposed section 64AB or section 67AA, and requires that one of those components is to be a part of the sentence. One possible component that the court may order is that the offender is to be released with the court imposing a community based order, within the meaning of the Sentencing Act 1995, with a supervision requirement and a programme requirement as primary requirements of that order. Another possible component is that the court may order that the offender be released, with the court imposing an intensive supervision order, within the meaning of the Sentencing Act 1995, with a programme requirement as a primary requirement of that order. The other possible component, if the offender is a young person (as defined in the Young Offenders Act 1994), is that the court may, subject to sections 50, 50A and 50B of that Act, make a youth community based order or an intensive youth supervision order (within the meaning of that Act) imposing at least attendance conditions and supervision conditions on the offender.

The proposed subsection (9) states the relationship between the proposed subsections (7) and (8) on the one hand and sections 39(3) and (4) of the Sentencing Act and section 74 of the Young Offenders Act on the other. The former are to apply despite the latter.

The proposed subsection (10) provides that subsection (8) does not apply if the court imposes a custodial sentence on the offender.

**Clause 22 – Part 3 of the Bill amends the Young Offenders Act 1994**

This clause states that the amendments in this Part of the Act are to the Young Offenders Act 1994 (clauses 3 - 21 in Part 2 address the Road Traffic Act 1974).
Clause 23 – Amendment to Schedule 1 of the Young Offenders Act 1994

This clause amends Schedule 1 to the Young Offenders Act. Schedule 1 sets out the offences for which a caution cannot be given, which cannot be referred to the Juvenile Justice Team, and for which a conviction will normally be recorded. The amendment adds to the Schedule the proposed sections 64AB, 64AC, 67AA and 67AB, as well as section 67.