



compliance

The Office of Consumer and Business Affairs investigates breaches of the *Second-hand Vehicle Dealers Act 1995*, including unlicensed operators.

SUBSTANTIAL PENALTIES MAY BE IMPOSED

We strongly recommend that you obtain a copy of the *Second-hand Vehicle Dealers Act 1995* and Regulations from:

Service SA Government
Legislation Outlet
Lands Titles Office,
101 Grenfell Street,
Adelaide SA 5000
Telephone **13 23 24**
or visit
www.parliament.sa.gov.au

Office of Consumer and Business Affairs

Business and Occupational Services

Level 3, Chesser House
91 - 97 Grenfell Street
Adelaide SA 5000
Telephone (08) 8204 9686

Regional Centres

Berri, Mount Gambier,
Naracoorte, Port Augusta,
Port Lincoln, Port Pirie
Telephone **131 882**

Translating and Interpreting Services (TIS)

Telephone **131 450**

www.ocba.sa.gov.au

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Second-hand Vehicle Dealers

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Business and
Occupational Services



www.ocba.sa.gov.au

The main reason for licensing second-hand vehicle dealers is to provide consumer protection. The Commissioner for Consumer Affairs administers the *Second-hand Vehicle Dealers Act 1995*. The legislation sets out minimum entry standards and promotes professional and ethical work practices in the second-hand vehicle dealers industry.

Dealers Must be Licensed

Any natural person or body corporate who carries on business or holds himself or herself out as a second-hand vehicle dealer, must be licensed under the *Second-hand Vehicle Dealers Act 1995*. If a business operates as a partnership then each partner must hold their own licence. Persons in the business of selling second-hand motorcycles must also hold a dealers licence.

Are you Considered a Dealer?

A private person who sells or offers for sale a second-hand vehicle is not normally considered to be a dealer. However, a person who sells a vehicle as part of a profit-making system may be considered to be a dealer. A person is required to be licensed as a second-hand vehicle dealer if they are carrying on a business as a dealer. If you have any doubts about this issue, you should seek independent legal advice.

Licence Not Required

You are not required to hold a licence as a second-hand vehicle dealer if you are:

- a credit provider (as defined by the Consumer Credit Code) and the selling of second-hand vehicles is incidental to your credit business
- an auctioneer selling second-hand vehicles on behalf of others, who does not otherwise carry on the business of selling second-hand vehicles, or
- the Crown (the Government).

Penalties

If you trade as a second-hand vehicle dealer without holding a licence and you are convicted by the courts you may be liable for a penalty of up to \$20,000.

Licence Certificate

As a licensed dealer, you will receive a licence certificate for each registered premises. You must display your licence and registration of premises details, in a prominent position. You must also display your name under which you carry on business as a dealer (e.g. business name) and the words 'Licensed Second-hand Vehicle Dealer' (abbreviated to 'LVD') immediately followed by your licence number (and that of each partner if relevant), prominently and permanently at the main public entrance to each of your registered premises.

Second-hand Vehicles Compensation Fund

The Second-hand Vehicles Compensation Fund (the Fund) is administered by the Commissioner for Consumer Affairs and has been set up to protect the consumer should a dealer default on their obligations. All licensed dealers are required to pay a contribution to the Fund each year when they pay their licence fee.

If you do not pay this contribution your licence is suspended until such time as the payment is made. A fee is required to be paid by the licensee for each registered premises. In the case of partnerships, only one member of the partnership is required to pay the fee into the Fund.

Disciplinary Action

Second-hand vehicle dealers can be disciplined under the Act. The forum for disciplinary action is the Administrative and Disciplinary Division of the District Court and any person, including the Commissioner, may lodge a complaint to the court alleging grounds for disciplinary action to be commenced. The type of cause that may constitute this type of action is set out in the Act.

Disciplinary action court outcomes are recorded on the licensing public register available on OCBA's Internet site.

Some of Your Obligations

You must ensure that licensing requirements are met, that the prescribed display notices are correct, and the proper sales contract process is followed in accordance with the legislation. You must perform your duty to repair expeditiously and act properly and fairly in your business dealings. A licensed company must ensure that a person who is a licensed dealer properly manages the business. You must notify the Commissioner in writing (within 14 days) of changes to your personal or business details (e.g. address, directorship, business name, partnerships, etc).

Mutual Recognition

If you want to carry on business in South Australia as a second-hand vehicle dealer and hold a current interstate/New Zealand registration in an equivalent occupation, you may be able to apply for mutual recognition in this State. For more details please contact this office. Mutual recognition only applies to individuals and not companies.

Business Name

Under the *Second-Hand Vehicle Dealers Act 1995*, you must not carry on business as a dealer under a licence except in the name that appears in your licence or in a business name that has been registered under the *Business Names Act 1996*. The Commissioner must also be advised in writing of your business name before you commence business.

Entitlement to a Licence

You are entitled to hold a licence if you:

- are 18 years of age or older
- are not suspended or disqualified from carrying on an occupation, trade or business
- are not an undischarged bankrupt or subject to a composition, deed, or scheme of arrangement with or for the benefit of creditors
- have not been, in the last five years, a director of a company wound up for the benefit of creditors
- have not been convicted of an indictable offence of dishonesty
- have not in the last ten years preceding your application, been convicted of a summary offence of dishonesty, and
- are a fit and proper person.

Your company is entitled to hold a licence if:

- it is not suspended or disqualified from carrying on an occupation, trade or business
- it is not being wound up and is not under official management or receivership
- each director has not been, in the last five years, a director of a company wound up for the benefit of creditors
- each director has not been suspended or disqualified from carrying on an occupation, trade or business
- each director has not been convicted of an indictable offence of dishonesty
- each director has not, in the last ten years preceding the application, been convicted of a summary offence of dishonesty, and
- each director is a fit and proper person.

If the Commissioner for Consumer Affairs refuses your licence you can appeal to the District Court within one month from the date of refusal.

Management of a Company

In the case of the licensed dealer being a company, the Act requires the business to be properly managed and supervised by a natural person who is licensed as a second-hand vehicle dealer.

Qualifications

There are no qualifications and/or experience necessary to hold a dealers licence.

Obtaining a Licence

You can apply for a new licence by answering a series of questions orally, either over the telephone or in person at our Grenfell Street office. We will complete the application form for you using our computer-based system and an application form with your answers will be produced for you to check and sign. You will need to lodge with your application the specified fees and supporting documents. Our office will then assess your application to determine if you have met all the necessary criteria.

Licence Fees

A schedule of fees is included with the application form. To maintain the currency of your licence, you must pay a licence fee each year and provide the Commissioner with certain information. If you fail to do so, a penalty may be imposed and the licence cancelled.

In the case of partnerships, all partners are required to pay the relevant fees.