



Government of **Western Australia**
Department of **Commerce**

Fitness industry

guide to the code of practice



An overview for the fitness industry

Acknowledgements

The fitness industry code of practice was developed with extensive input from members of the fitness industry; Fitness WA; and members of the general public.

The Department of Commerce wishes to thank all the people whose hard work and support have made the code of practice possible.

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If you require an interpreter, call the Translating and Interpreting Service (TIS) on 131 450 and ask for connection to 1300 30 40 54.

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Fitness industry code of practice

Introduction

The Fair Trading (Fitness Industry Code of Practice) Regulations 2010 sets out specific standards of conduct for the fitness industry. For the purposes of this guide, the regulations will be referred to as the code of practice, or the code.

The code of practice is intended to increase public confidence in fitness centres and other fitness suppliers by establishing mandatory standards of conduct across the industry.

The code of practice is the result of extensive consultation with the fitness industry and its customers. The code is an opportunity for fitness industry members to promote their industry, their commitment to maintaining high standards and their involvement in developing the code.

The key features of the code include requirements that:

- a 48 hour cooling-off period is provided for all new fitness centre memberships;
- membership agreements are in writing and contain full fee disclosure;
- membership agreement prepayments are limited to 12 months in length; and
- standard complaints handling procedures are used.

The code of practice outlined in this booklet and the *Fair Trading Act 1987*

are just some of the regulatory requirements that apply to fitness industry businesses. Some other areas of responsibility are noted in the code of practice.

Implementation of the code of practice

The fitness industry has operated under a code of practice since 2005. The code has been renewed and came into effect on 31 December 2010. The code is enforced by the Department of Commerce, Consumer Protection Division.

It is very important that affected businesses are familiar with the requirements of the code.

It is recommended that businesses seek legal advice when drafting their membership agreements to comply with the code of practice.

This guide is designed to help members of the fitness industry to understand, and comply with, the code of practice. However, every affected business will need to obtain a copy of the code itself in order to:

- become familiar with their rights and obligations under the code; and
- make the code available for clients or prospective clients to read if they wish.

For information on how to obtain copies of the code see page 17.

Does the code of practice apply to you?

Suppliers of fitness services

The code of practice applies to 'suppliers' who are 'carrying on the business of supplying fitness services'. For example, a supplier may be:

- an owner of a fitness centre who receives income, other than rent, for the provision of fitness services at a fitness centre;
- a franchisee of a fitness centre;
- a person operating a business as a personal trainer or fitness trainer; or
- a person operating a business as a fitness instructor.

A supplier may be a company, partnership or sole trader.

The term 'supplier' is used in the code of practice, and throughout this booklet, to refer to those businesses which must comply with the code.

The whole code of practice applies to owners and franchisees of fitness centres, and parts of it apply to personal trainers, fitness trainers and fitness instructors.

What is a 'fitness service'?

Under the code of practice, the term 'fitness service' includes:

- an exercise screening;
- an individual exercise program;
- a group exercise program; or
- the provision of fitness equipment at a fitness centre for use by clients.

A fitness service **does not include** a service supplied by:

- a doctor registered under the *Medical Act 1894*;
- a physiotherapist registered under the *Physiotherapists Act 1950*;
- a sporting club or organisation for the playing of, or training for, a sport;
- an educational institution for exclusive use by staff or students; or
- a person teaching someone to perform, or train for, martial arts, dancing or ballet.

A fitness service also **does not include**:

- the use of a spa bath, sauna bath, swimming pool or similar facility where no other fitness service is supplied;
- a fitness service at a fitness centre provided for the sole purpose of medical rehabilitation; or
- the hire of a court or other facility for the playing of sport.

The following table provides some examples of the groups to whom the Code does apply, and those to whom it does not apply:

The code does apply to:	The code does not apply to:
A fitness centre which is conducted as a business providing gym facilities and group exercise or aerobics classes	Registered doctors
Fitness instructors providing group exercise sessions, aerobics classes or lifestyle programs	Registered physiotherapists
Personal trainers or fitness trainers operating business	Sports training provided by a sporting club
A university fitness facility or gym used by one or more members of the general public	A school fitness facility or gym which provides fitness services to staff or students only
A fitness centre providing lifestyle programs	Businesses providing the hire of court facilities only, such as squash, basketball or indoor soccer courts
A swimming facility that provides aquarobics or other fitness services	A martial arts, dancing or ballet school for performance and training in a discipline
	A swimming facility that provides a swimming pool only and no other fitness services

What is a ‘fitness centre’?

The code of practice contains a number of obligations that apply to fitness centres but do not apply to other suppliers.

The code defines a ‘**fitness centre**’ as ‘an indoor facility primarily used for providing fitness services’. For example, a fitness centre would include a business such as a health or fitness club that provides an indoor gym and group exercise classes.

However, a personal trainer or fitness instructor in the business of delivering fitness services outdoors would not be covered by the definition of fitness centre.

A business that runs group exercise classes at a local hall would also not be considered to be a fitness centre because the local hall is not ‘primarily used for providing fitness services’.

Administration of the code of practice

The Department of Commerce administers the code of practice and deals with alleged breaches of the code.

General enquiries

General enquiries about the code of practice may be made to the Department's Consumer Protection Advice Line on 1300 30 40 54 (cost of a local call anywhere in the State).

Complaints about alleged breaches of the code of practice

Suppliers of fitness services are required by the code to deal with complaints made by clients. Therefore complaints about breaches of the code of practice should be directed to the supplier and only referred to the Department where they have not been resolved to the client's satisfaction.

Consumer Protection's Retail and Services Branch will handle more complex enquiries and follow up complaints about alleged breaches of the code of practice.

Written complaint forms can be obtained from the Consumer Protection Advice Line on 1300 30 40 54 or online at www.commerce.wa.gov.au.

After a complaint is received

If a complaint is made against you as a supplier, you will be notified by a Department of Commerce officer by phone or mail and given the opportunity to provide your side of the story.

Depending on the seriousness of the matter, the Department may choose to conciliate the matter and arrive at an agreement between you and the client, or take stronger action. If no redress is made, the consumer may decide to follow the option of taking the matter to the Magistrates Court.

If a complaint is made about you, you will be given an opportunity to provide your side of the story.

Potential penalties and action

Under the code of practice, the Commissioner for Consumer Protection may seek a deed of undertaking that a business will change its behaviour in order to comply with the code. If the business does not comply with the deed of undertaking, the Commissioner for Consumer Protection can take the matter to the State Administrative Tribunal. The State Administrative Tribunal may order the business to follow the undertaking.

The Commissioner for Consumer Protection may seek leave from the State Administrative Tribunal to take prosecution action before the courts. The court can impose a maximum fine of \$10,000 for the breach of a deed of undertaking.

The Commissioner may also approach the courts for an injunction to prevent a business from breaching the code, or seek an order through the courts for compensation on behalf of a consumer.

An overview of the code of practice

The fitness industry has shown that it is keen to further increase standards of professionalism. The code supports these intentions by setting minimum standards of conduct in key areas.

The code has five divisions

The code is organised into five divisions, with specific paragraphs, known as 'clauses', that provide more detail.

The five divisions of the code are:

- Division 1 – Introduction
- Division 2 – General rules of conduct
- Division 3 – Disclosure
- Division 4 – Membership agreements
- Division 5 – Complaint handling procedures

The following information provides an outline of the requirements in the five divisions of the code. In addition to reading this guide, you will need to obtain a copy of the code of practice and become familiar with it.

For information on how to obtain copies of the code see page 17.

Note:

The topics in this section with an asterisk next to the heading (*) apply to fitness centres only. All other topics apply to all fitness suppliers, including fitness centres, fitness instructors, personal trainers and fitness trainers.

The definition of 'fitness centre' used in the code of practice is provided under the 'Does the code apply to you?' section on page 4.

Division 1 - Introduction

Division 1 of the code of practice outlines the **objectives** of the code, **defines the common terms** used in the code and the supplier's **obligation to ensure compliance**.

Objectives (clause 1)

The objectives of the code are to:

- ensure appropriate standards of service are maintained in the fitness industry;
- encourage and maintain consumer confidence in the fitness industry; and
- support and promote the fitness industry.

Interpretation and meaning of fitness service (clauses 2 & 3)

In these clauses, the key terms used in the code are defined. For instance, the definitions of 'supplier,' 'fitness service' and 'fitness centre' are provided. These key definitions are described above in the 'Does the code apply to you?' section commencing on page 3.

Compliance with the code (clause 4)

Division 1 requires that a supplier must comply with the code of practice. A supplier must follow the code of practice even if a client asks the supplier to do something which conflicts with the code.

Division 2 - General rules of conduct

Division 2 of the code of practice provides some general requirements in relation to **client confidentiality**, **being truthful** about staff qualifications and membership, and **ethical sales** processes.

Client confidentiality: In the course of business, a supplier will obtain confidential information about clients, such as their contact details, bank details and information about their level of fitness. The code of practice clarifies the duties of suppliers in this area in line with the Commonwealth's *Privacy Act 1988*, which can be downloaded from www.comlaw.gov.au

The code includes requirements about confidentiality of client information, being truthful with clients and ethical sales practices.

Being truthful: Unfair sales practices and false or misleading advertisements can result in a poor image for an industry and negative impacts for consumers. The code delineates some boundaries in this area which are consistent with the *Fair Trading Act 1987*.

Ethical sales: A supplier may gain an unfair competitive advantage by misrepresenting their qualifications or by falsely claiming to be a member of, or be endorsed by, an organisation. The code of practice rules out this type of practice.

Claiming membership or endorsement (clause 5)

A supplier must not falsely claim to be a member of, or be endorsed by, an organisation or association. A supplier must also take reasonable steps to ensure an employee does not do this.



Qualifications and employment of staff (clause 6)

A supplier may not misrepresent the qualifications held by the supplier or employees of the supplier. A supplier must take reasonable steps to ensure an employee does not falsely represent their own qualifications or that of the supplier.

*** High pressure selling techniques, harassment or unconscionable conduct (clause 7)**

A fitness centre must not engage in high-pressure selling techniques, harassment or unconscionable conduct when selling a membership agreement to a client. The fitness centre must also take reasonable steps to ensure an employee does not engage in these activities.

'Unconscionable conduct' is conduct which is unfair or unreasonable and which results from a stronger party taking advantage of its superior knowledge or bargaining position. Examples of unconscionable conduct include:

- requiring a client to comply with unnecessary or unreasonable conditions;
- taking advantage of a client's lack of understanding if it is reasonably apparent they can not understand relevant documents; or
- using undue pressure on a client.

High pressure selling techniques and harassment are prohibited.

False or misleading advertisements or representations (clause 8)

A supplier must not solicit clients through false or misleading advertisements or other statements which the supplier knows are false or misleading.

For example, a supplier should not advertise a membership as including crèche services unless the crèche service is covered in the membership fee or the advertisement indicates that there will be an extra cost.

A supplier at a fitness centre must also take responsibility for the actions of employees by taking reasonable steps to ensure employees do not engage in this type of behaviour.

*** Confidentiality (clause 9)**

A fitness centre must not use or disclose confidential information about a client which was obtained under the client's membership agreement. However, confidential information may be released if the client authorises the supplier to use or disclose the information, or if the information must be lawfully used or disclosed. The confidentiality obligations apply to information about former clients as well as current clients of the fitness centre.

*** Free or discounted services (clause 10)**

A fitness centre may not describe part of a membership agreement as free or discounted if the membership agreement has been increased in price, decreased in quality or restricted as a result of the discount.

Division 3 - Disclosure

Division 3 of the code of practice provides some rules about **information that must be disclosed to a client prior to the signing of a membership agreement**. The disclosure of information prior to the signing of a membership agreement can significantly reduce the risk of disputes later down the track. The code of practice introduces some mandatory standards in this area which reflect good practice. Some **'truth in advertising'** requirements have also been included.

Making an informed decision (clause 11(a))

A supplier must ensure sufficient information is provided to clients to enable them to make an informed decision about using the fitness service. The information is likely to differ depending on the type of fitness service that is being provided.

As an example, in the case of a client deciding whether or not to join a fitness centre, it would be expected that the client would be advised about the fees and contractual matters, such as membership types, fees and charges, payment options and termination processes. Information about the facilities and services, such as equipment, opening hours and types of fitness services that will be provided should also be given.

Promotional material (clause 11(b))

Suppliers must ensure that promotional material about a fitness service is truthful, accurate and unambiguous.

Suppliers must also ensure this material does not encourage unrealistic expectations of the outcomes of the fitness service.

Promotional material must be truthful, accurate and unambiguous.

False or misleading comparisons with another supplier (clause 11(c))

A supplier must not knowingly make misleading or false comparisons with a fitness service provided by another business.

False or misleading statements about cost (clause 11(d))

A supplier must not knowingly make any false or misleading statements or representations about the cost of a fitness service.

Code of Practice available for clients (clause 11(e))

A supplier must have available a copy of the code of practice for a client or potential client to read through if they wish.

*** Disclosure of information (clause 12)**

Before a fitness centre enters into a membership agreement with a client or prospective client, they must give the person:

- an opportunity to read the membership agreement and the rules (if there are any) of the fitness centre; and
- if the fitness centre has commenced operating, provide an opportunity to inspect the fitness centre.

Division 4 - Membership agreements

Division 4 of the code of practice includes a **mandatory 48 hour cooling-off period, certain information** to be included in membership agreements, a **warning statement** for inclusion in ongoing membership agreements and a **12 month limit on pre-paid membership** agreements.

In the code of practice, a '**membership agreement**' is defined as 'an agreement between a supplier and a client for the supply of fitness services by the supplier to the client at a fitness centre'. This means that only businesses defined as fitness centres must comply with the requirements of Division 4.

*** 48 hour cooling-off period (clauses 13 & clause 19)**

A cooling off period gives clients a greater sense of confidence in the fitness industry and the services provided.

The code of practice requires a 48 hour cooling-off period for fitness centre memberships. The cooling-off period allows a client to cancel their membership, without needing to give a cause or reason, during the 48 hour period immediately after they enter into a membership agreement.

The code requires that the cooling-off period be included in all new membership agreements provided to clients.

*** Terminating a membership agreement during the cooling-off period (clause 19)**

A client can terminate a membership agreement during the 48 hour cooling-off period if they give the supplier written notice of termination.

If a client terminates their membership during a cooling off period, the supplier must refund their money. However, the supplier may deduct from the refunded amount the cost of any fitness services that the client used prior to terminating the contract and a 'reasonable' administration charge (if there is one).

The refund must be provided within 14 days of the client terminating the agreement.

For example, if a client agreed to join a fitness centre and signed a membership agreement at 10.00am on Wednesday 3 March 2009, then the client would be entitled to cancel this membership agreement up until 10.00am Friday 5 March 2009. The client would not need to give a reason for cancelling the membership agreement during the cooling-off period.

The code requires information about a cooling-off period to be included in all membership agreements between a fitness centre and its clients. The details about required information are included under the heading 'Information in a membership agreement' below.

*** Cooling-off period – membership agreement signed before the fitness centre opens (clause 13)**

When a fitness centre is being established, it is sometimes the case that clients are sought, and membership agreements are entered into, before the fitness centre opens its doors.

The proposed opening day must be identified in the membership agreement with the client. The cooling-off period will commence at the time the fitness centre opens, unless the proposed opening day written into the membership agreement has changed.

If the proposed opening day changes from the information written in the membership agreement, the supplier should notify the client about the date of the new opening day. If the fitness centre *has not opened* at the time of this notification, the cooling-off period commences on the day the fitness centre does open.

If the fitness centre *has already opened* when the client receives notification about the opening day, then the cooling-off period will commence on the day the client receives notice.

These requirements ensure that people who sign up with a fitness centre that has not yet opened will have the same opportunities to inspect the fitness centre and use a cooling-off period as other clients.

*** Membership agreement procedure (clause 14 & clause 16)**

The code of practice requires that:

- a membership agreement is made in writing;
- the membership agreement is dated and signed by the client; and
- the client is given a copy of the signed membership agreement immediately after signing.

A membership agreement must be in writing and provided to a client immediately after signing.

*** Information in a membership agreement (clause 15)**

The code of practice requires that all membership agreements for fitness centres contain certain information, such as information about the 48-hour cooling-off period and the fees and charges payable under the agreement. A comprehensive written contract reduces the likelihood of disputes by clarifying the fees, services and expectations involved.

Other information that a fitness centre considers relevant can also be included in the membership agreement, as long as it does not conflict with the requirements in the code of practice.

For example, a fitness centre could, if it wished, include a standard clause enabling a client to suspend their membership agreement. These clauses can make a membership agreement more flexible for clients and therefore more attractive to them.

As another example, a fitness centre would also include general risk management conditions common to membership agreements.

In order for your staff and your clients to clearly understand the contract, it is advisable for the membership agreement to be written in simple and easy-to-understand language.

A fitness centre will need to ensure that its membership agreement contains the following information:

- the supplier's name, address and (if applicable) the supplier's Australian Company Number;
- the supplier's and client's rights and obligations;
- the service, or services, to be provided under the agreement;
- a statement in bold 14 point type that the agreement is subject to a 48 hour cooling-off period;
- the procedure for terminating a membership agreement during the cooling-off period, as set out in clause 19 of the code;
- the date and time on which the cooling-off period starts and ends;
- the circumstances (other than the cooling-off period) under which the client or supplier may terminate the agreement and the procedure for terminating the agreement.

For example, a supplier may choose to include other standard clauses to allow a client to suspend their membership, transfer their membership to another person or terminate their membership due to a serious illness;

- the administrative charge (if any) the client must pay to the supplier if the client terminates the agreement during the cooling-off period or for any other reason;
- all fees and charges that are to be paid under the membership agreement and, in cases where different services are provided and separate fees are payable, the amount of the fee or charge for those services. For instance, depending on the services provided under the membership agreement, a fitness centre may need to include reference to an administration fee, exercise screening, general membership fee, personal training and hot spa access fee so that the client knows what each service costs;
- the method of payment, for instance, credit card, cheque, or savings bank account; and
- if the membership agreement has been signed by a client before the fitness centre has opened, then the proposed opening day must be included in the contract, to ensure that a client is aware of the proposed opening day.

*** Ongoing membership agreement (clause 15(1)(m) & 15(2))**

Although the 'ongoing membership agreement' has proven a useful tool for the fitness industry and many clients of the industry, clients are not always familiar with this type of contract.

If a membership agreement involves the client having to terminate the agreement in writing before it comes to an end, a statement in bold point type located in a box must be included in the membership agreement. The statement explains the key aspects of this type of agreement, as follows:

This is an ongoing membership agreement. The agreement will continue until either you or the supplier terminate it in the way described in the agreement.

If an automatic debit arrangement is in place, membership fees will continue to be debited from your credit card or account until you or your fitness centre cancels the arrangement by notifying your bank or credit provider. If you terminate the agreement or stop the automatic debit arrangement in a manner not described in the agreement, then you may be liable to the fitness centre for damages for breach of contract.

*** 12-month limit for pre-paid memberships (clause 17)**

Fitness centres generally offer a variety of payment options to their clients, including pre-paid memberships in which the payment is made in advance. The code of practice prohibits a fitness centre from accepting fees for more than 12 months payment in advance.

The purpose of this clause is to limit the financial exposure of clients in the event that the fitness centre goes out of business.

The code of practice limits pre-paid memberships to a maximum of 12 months.

*** Prepayment of fees where a fitness centre is leased (clause 18)**

This clause applies to a fitness centre which has less than 12 months before the lease on the fitness centre's premises is due to expire, and which has no option to renew the lease. In these circumstances, the fitness centre may not sell or renew a pre-paid membership agreement for a period that exceeds the unexpired period of the lease. This requirement is similar to the obligations for businesses under the *Fair Trading Act 1987* (see page 16).

The clause only affects prepayments which extend beyond the terms of the lease. The code of practice does not prevent a fitness centre in this situation from entering into other types of membership agreements, such as pre-paid memberships that fall within the term of the lease, and instalment payment memberships.



*** Request to terminate a membership agreement (clause 20)**

The termination of membership agreements, particularly ongoing membership agreements, has been a source of complaints from clients. For the benefit of the industry as a whole, standard procedures in this area will help to prevent such problems recurring in the future.

The code of practice establishes two basic requirements in relation to the handling of the termination of membership agreements.

1. The code requires that when a member wishes to terminate the membership agreement, other than during the cooling-off period, the supplier must respond to the request within a maximum of seven days.
2. The request for termination must be recorded by the fitness centre as soon as possible.

Different timeframes apply to the termination of memberships during a cooling-off period. These requirements are explained in clause 19 of the code of practice.

A fitness centre must respond within seven days to a member's request to terminate a membership.

Division 5 - Complaint handling procedures

Division 5 of the code of practice sets out a framework for **handling complaints from clients**. Complaint handling standards are a key part of handling disputes quickly and efficiently. The existence of complaint handling procedures across an industry can reduce disputes and improve the public perception of an industry.

Complaints handling process (clause 21)

The code of practice establishes a framework for handling general complaints about service and other matters. Suppliers will need to ensure that these standards and processes are incorporated into their existing procedures for handling complaints.

The code of practice requires that:

- a supplier must make every reasonable effort to resolve quickly and fairly a complaint made by a client;
- information about how to lodge a complaint must be made readily available to a client;
- a record of each complaint must be placed on file; and
- a response to the client indicating that the complaint has been received must be made within a maximum of seven days.

Suppliers may incorporate these standards into any existing complaints handling procedures and policies, as long as the existing practices are not inconsistent with the requirements in the Code of Practice. For instance, as part of a supplier's customer service approach, they may choose to aim for faster response times and provide more detailed advice to staff about how to handle complaints effectively.

For more tips about complaints handling standards, the Department of Commerce, Consumer Protection Division fact sheet *Complaints: a guide for businesses* may be helpful. Copies are available online at www.commerce.wa.gov.au or from the Consumer Protection Advice Line on 1300 30 40 54 (cost of a local call anywhere in the State).

General obligations under the *Fair Trading Act 1987*

The following information provides a brief overview of some of the obligations in the *Fair Trading Act 1987*. This Act imposes sanctions against a wide range of unfair trading practices. These obligations apply to all traders and are drawn from the consumer protection provisions contained in Part V of the Commonwealth's *Trade Practices Act*.

Prohibition of unfair trading practices

The *Fair Trading Act 1987* prohibits businesses from certain practices, such as:

- accepting payment for goods or services if they intend to supply something materially different;
- accepting payment for goods or services if there are reasonable grounds for believing they will not be able to supply the goods or services;
- making misleading or deceptive statements; and
- unconscionable conduct.

Implied conditions and warranties

The *Fair Trading Act 1987* implies a number of conditions and warranties into all contracts with consumers. For example, in relation to the supply of services, the implied warranties include that:

- the service will be rendered with due care and skill; and
- any materials supplied in connection with the service will be reasonably fit for that purpose.

For example, it is an implied warranty in an agreement for the provision of fitness services that any fitness equipment provided will be in a reasonable condition.

These implied conditions and warranties automatically form part of every business's contract with their client. The *Fair Trading Act 1987* provides that if a business does not meet these implied conditions then the client may recover from the business the amount of any loss or damage suffered.

There is an implied condition in every contract for the supply of services that the services will be rendered with due care and skill.

Product safety and information standards

The *Fair Trading Act 1987* maintains compulsory product safety standards. The Act requires specific goods to comply with particular design rules and information standards, and that certain information is supplied with those goods. These standards are usually developed by the Australian Standards Association and made mandatory. For instance, exercise cycles must comply with the requirements of Australian Standard AS 4092-1993 as amended.

The Commissioner for Consumer Protection may also issue public warning notices about dangerous goods and order suppliers to recall consumer goods with safety related defects.

The Department of Commerce website contains information about product safety standards at www.commerce.wa.gov.au.

Further information

This publication has been prepared to assist suppliers of fitness services with an overview of their rights and obligations under the code of practice. This publication does not replace the fitness industry code of practice. You should read the code of practice to be certain of your legal position. You may also wish to seek independent legal advice about how the code of practice applies to your situation.

Copies of the code of practice

Online access to the Fair Trading (Fitness Industry Code of Practice) Regulations 2010 is available on the State Law Publisher's website: www.slp.wa.gov.au. Access the 'WA legislation database' window and select 'Subsidiary legislation in force'. Then look by title for: Fair Trading (Fitness Industry Code of Practice) Regulations 2010.

Copies can also be purchased from the State Law Publisher's sales outlet at 10 William Street Perth (river end of William Street), phone number 9426 0000. You will need to ask for the Fair Trading (Fitness Industry Code of Practice) Regulations 2010.

Department of Commerce

Consumer Protection Division

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(for the cost of a local call statewide)

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