

GUIDELINES FOR WRITING QUALITY CRITERIA¹

Introduction

Defining quality in dispute resolution can be a tricky process. It is particularly contentious when we consider that we are yet to reach consensus on how to define processes such as conciliation and mediation. Any attempt to define quality needs to strike a balance between being overly specific and overly general. Being too specific can result in a reductive and prescriptive checklist that limits a practitioner's ability to respond to the needs of the parties. Being too general often results in a set of descriptors that are essentially meaningless or unhelpful to practitioners trying to reflect on or develop their practice.

One way to address this tension is to draw on existing cross-disciplinary frameworks which describe stages of development that focus less on what practitioners do and more on how or why they do it. By adopting this approach for e.g. the NMAS Review 2020-21, dispute resolution professionals will potentially have access to rich descriptions of practice that are flexible enough to accommodate a range of mediation models or practitioner styles.

Working with these guidelines

Rules 1 to 3 (in **bold**) are the core rules. Standards or other descriptors of practice developed using this method are also known as rubrics. Rubrics that do not follow these rules require users to guess what the observer is looking for. This is like asking practitioners to jump but providing no answer to the question "How high?". Rules 4 to 10 are additional rules that increase the usefulness of the rubrics. Intriguingly, Rules 1 to 3 are the easiest to use when evaluating existing rubrics but are the hardest to apply when learning to write rubrics. You will find that rubric writing is a challenge that rewards persistent effort.

The most effective quality criteria:

1. AVOID COUNTS OF THINGS RIGHT AND WRONG OR PSEUDO-COUNTS (E.G. SOME, MANY, ETC.)

Counts and pseudo-counts do not give an indication of quality or sophistication and their use can discourage practitioners from testing their own limits. For example, a rubric that specifies that a practitioner always, sometimes or never does 'X' or counts the number of minutes taken for a particular part of the process, may encourage practitioners to be rigid or reluctant to adapt to the needs of parties.

¹ Adapted from Hutchinson D., English, N., Robertson, P. (2015) 'Rules for Writing Quality Criteria' *Reliable Rubrics*. University of Melbourne, Assessment Research Centre. <https://reliablerubrics.com/2015/02/09/rules-for-writing-quality-criteria>



Counts can also be an issue where resolution rates are used as the sole measure of practitioner quality as it may encourage mediators to prioritise matters that appear most likely to resolve.

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| Increasing levels of quality | 3. Always manages parties' emotions | 3. Distinguishes between parties' use of constructive emotion which may provide clues to unidentified interests and unconstructive emotion which may distract or derail resolution |
| | 2. Sometimes manages parties' emotions | 2. Creates opportunities for parties to express their feelings about the issues in dispute |
| | 1. Never manages parties' emotions | 1. Acknowledges parties' emotions |
| Aspect | Manages parties' emotions | Manages parties' emotions |
| | Flawed Example | Improved Example |

2. AVOID LANGUAGE THAT IS AMBIGUOUS OR CONTAINS COMPARATIVE TERMS (E.G. APPROPRIATE, SUITABLE, ADEQUATE) TO DEFINE QUALITY OF PERFORMANCE

Subjective terms can lead to inconsistent assessments and disagreements during feedback about, for example, what constitutes 'appropriate' or 'suitable'. Even when observers have a consistent view as to what these terms mean, it does not provide users with guidance about what is required.

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| Increasing levels of quality | 3. Excellent questioning skills | 3. Matches question type e.g. open, pointed or closed, to the type and scope of information sought |
| | 2. Good questioning skills | 2. Uses open ended questions |
| | 1. Adequate questioning skills | 1. Asks clarifying questions |
| Aspect | Asks questions | Asks questions |
| | Flawed Example | Improved Example |

3. DISCRIMINATE BETWEEN PERFORMANCES OF INCREASING QUALITY WITHOUT PROCEDURAL STEPS IN A SEQUENCE OF OPERATIONS

If three steps are necessary in order to complete parts of a task, rubrics sometimes turn these procedural steps into three criteria (completes step one, completes step two, etc.). This implies that the practitioner who reaches the end of the sequence of steps has shown greater quality than the practitioner who only completes step one. However, each of the steps can be performed with differing degrees of quality, so each should have its own quality criteria. This allows a judgement to be made about the difference between a practitioner who completes step one only, but does so to a very high level, and a conciliator who just scrapes through all three steps.

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| Increasing levels of quality | 3. Completes Stage 3: Facilitates negotiation and agreement | 3. In collaboration with parties, draws from a range of dispute resolution techniques (e.g. evaluative or transformative mediation techniques) to tailor the process to needs of the parties and/or the context of the dispute. |
| | 2. Completes Stage 2: Facilitates private sessions and option generation | 2. Makes changes to process to accommodate parties needs or the context of the dispute e.g. may change to shuttle mediation if concerns for safety. |
| | 1. Completes stage 1: Facilitates opening statements and explores issues | 1. Adheres to the prescribed mediation process |
| Aspect | Facilitates mediation process | Facilitates mediation process |
| | Flawed Example | Improved Example |

The most effective quality criteria also:

4. DESCRIBE PERFORMANCES SUCH THAT EACH SUCCESSIVE DESCRIPTION IMPLIES A PROGRESSIVELY HIGHER LEVEL OF PERFORMANCE QUALITY

This ensures that the quality of the practitioner's performance is recognised in the rubrics used to judge quality. If observers find themselves realising when assessing that the rubrics being used do not allow them to recognise the quality in the practitioner's work, then there is something wrong with the rubrics and they should be reviewed.

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| Increasing levels of quality | 3. Completes Stage 3: Facilitates negotiation | 3. In collaboration with parties, draws from a range of dispute resolution techniques (e.g. evaluative or narrative mediation) to tailor the process to needs of the parties and/or the context of the dispute. |
| | 2. Completes Stage 2: Facilitates private sessions | 2. Makes changes to process to accommodate parties needs or the context of the dispute e.g. may change to shuttle mediation if concerns for safety. |
| | 1. Completes Stage 1: Facilitates opening statements and explores issues | 1. Adheres to the prescribed mediation process |
| Aspect | Facilitates mediation process | Facilitates mediation process |
| | Flawed Example | Improved Example (see Dreyfus' model of skill acquisition) |

5. CONTAIN ONE CENTRAL IDEA THAT CAN BE RECOGNISED

If more than one idea is contained in a criterion, it becomes difficult to judge which should be selected when a practitioner has achieved one part but not the other.



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| Increasing levels of quality | 3. Uses effective communication while facilitating the mediation and encourages parties to express their emotions based the questions asked and any coaching conducted during the preliminary conference. | 3. Matches question type e.g. open, pointed or closed, to the type and scope of information sought. |
| | 2. Redresses power imbalances to make sure that outcomes are fair, and that self-determination is the priority. | 2. Uses open ended questions. |
| | 1. Ask questions and responds in a way that is impartial, empathetic and professional. | 1. Asks clarifying questions. |
| Aspect | Asks questions | Asks questions |
| | Flawed Example | Improved Example |

6. ARE DIRECTLY OBSERVABLE (DO, SAY, MAKE, WRITE) AND AVOID NEGATIVES

When criteria are directly observable, reviewers are not required to make inferences in order to assess the work. Within a set of quality criteria there is no need to specify what the practitioner cannot do, as this is implied by the higher criteria.

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| Increasing levels of quality | 3. Is committed to assisting parties to generating their own options. | 3. Coaches parties to develop options that are informed by the mutual interests of both parties and/or, if possible, reconcile competing interests. |
| | 2. Understands that options should be generated by parties | 2. Assists parties to generate options that account for both position and interests |
| | 1. Doesn't assist parties to generate options | 1. Invites parties to identify range of options for resolution |
| Aspect | Assist parties to identify options for resolution | Assist parties to develop options for resolution |
| | Flawed Example | Improved Example |

7. REFLECT TYPICAL BEHAVIOURS THAT COVER A DIVERSE RANGE OF QUALITY, INCLUDING A STRETCH FOR THE MOST PROFICIENT

When rubrics are interpreted in a criterion-referenced manner – rather than being converted to a percentage achieved, as is common practice – users are not penalised for not reaching the highest criteria. This allows aspirational targets for the most proficient, so all users are encouraged to stretch their capabilities. Coaches and mentors are sometimes surprised when users achieve criteria that were considered aspirational, providing an important opportunity for coach/mentor learning.

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| Increasing levels of quality | 3. Assist parties to identify areas for compromise | 3. Synthesises professional experience and literature to select and implement tailored strategies that enable parties to make informed choices about if and how to navigate the impasse |
| | 2. Invites parties to consider the perspective of the other party including any current blockers to agreement | 2. Encourages parties through impasse by assisting them to weigh up their interests, options for resolution and alternatives to a negotiated agreement. |
| | 1. Encourages parties to consider the disadvantages of failing to resolve the dispute | 1. Invites parties to consider the negative implications of not coming to an agreement |
| Aspect | Assist parties to move through impasse | Assist parties to move through impasse |
| | Flawed Example | Improved Example |

8. SELF-WEIGHT BASED ON THEIR CAPACITY TO SEPARATE BY PERFORMANCE QUALITY, I.E. NO WEIGHTINGS ARE TO BE USED

Many traditional performance scales give greater weight to some rubrics than others. Weightings are often used because users recognise that some elements of practice are harder than others and they wish this to be recognised when the rubrics are converted into a rating. With a criterion-referenced interpretation, this reason for weighting some elements over others disappears, as the items are mapped to levels on a developmental progression, not a percentage. This allows the data to be used directly to plan professional development or see patterns across practitioner groups.

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| Increasing levels of quality | 3. (12 points) Is committed to assisting parties to generating their own options. | 3. Coaches parties to develop options that are informed by the mutual interests of both parties and/or, if possible, reconcile competing interests. |
| | 2. (5 Points) Understands that options should be generated by parties | 2. Assists parties to generate options that account for both their position and interests |
| | 1. (1 point) Doesn't assist parties to generate options | 1. Invites parties to identify range of options for resolution |
| Aspect | Assist parties to identify options for resolution (25% overall score) | Assist parties to develop options for resolution |
| | Flawed Example | Improved Example |

In other situations, coaches may weight rubrics to give users an indication of the time/effort they should spend on each component. This is a legitimate use of weightings and can easily be achieved through an accompanying instruction rather than in the rubric.

9. HAVE FOUR OR FEWER CRITERIA FOR ANY INDICATOR (TO SUPPORT CONSISTENCY OF JUDGEMENTS)



Experience in many instances has shown that when more than four criteria are used users struggle to distinguish consistently the different levels of quality, because the differences between them are too difficult to recognise. Distinctions are more easily made when the jumps in quality are larger. This results in more consistent judgements.

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| | 7. Empowers parties to compromise | |
| | 6. Advocates for compromise | |
| | 5. Promotes the benefits of compromise | |
| Increasing levels of quality | 4. Encourages parties to make a compromise | |
| | 3. Assist parties to identify areas for compromise | 3. Synthesises professional experience and literature to select and implement tailored strategies that enable parties to make informed choices about if and how to navigate the impasse |
| | 2. Invites parties to consider the benefits of compromise | 2. Encourages parties through impasse by assisting them to weigh up their interests, options for resolution and alternatives to a negotiated agreement. |
| | 1. Encourages parties to consider the disadvantages of failing to resolve the dispute | 1. Invites parties to consider the negative implications of not coming to an agreement |
| Aspect | Assist parties to move through impasse | Assist parties to move through impasse |
| | Flawed Example | Improved Example |

10. BE TRANSPARENT SO PERSONS ASSESSED CAN VERIFY THEIR OWN ASSESSMENT – NO JARGON.

It is ideal if all parties understand the criteria fully. This allows users to have greater control over their own learning and facilitates open communication between users, observers and coaches. Transparent criteria allow users to self-assess, which helps them make decisions regarding the way they utilise their time and energies.

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| Increasing levels of quality | 3. Completes Stage 3. Is a natural | 3. In collaboration with parties, draws from a range of dispute resolution techniques (e.g. evaluative or narrative mediation) to tailor the process to needs of the parties and/or the context of the dispute. |
| | 2. Completes Stage 2. Is a strong performer | 2. Makes changes to process to accommodate parties needs or the context of the dispute e.g. may change to shuttle mediation if concerns for safety. |
| | 1. Completes Stage 1. | 1. Adheres to the prescribed mediation process |
| Aspect | Facilitates mediation process | Facilitates mediation process |
| | Flawed Example | Improved Example |





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