Workshop Materials

4. Guidelines for describing quality

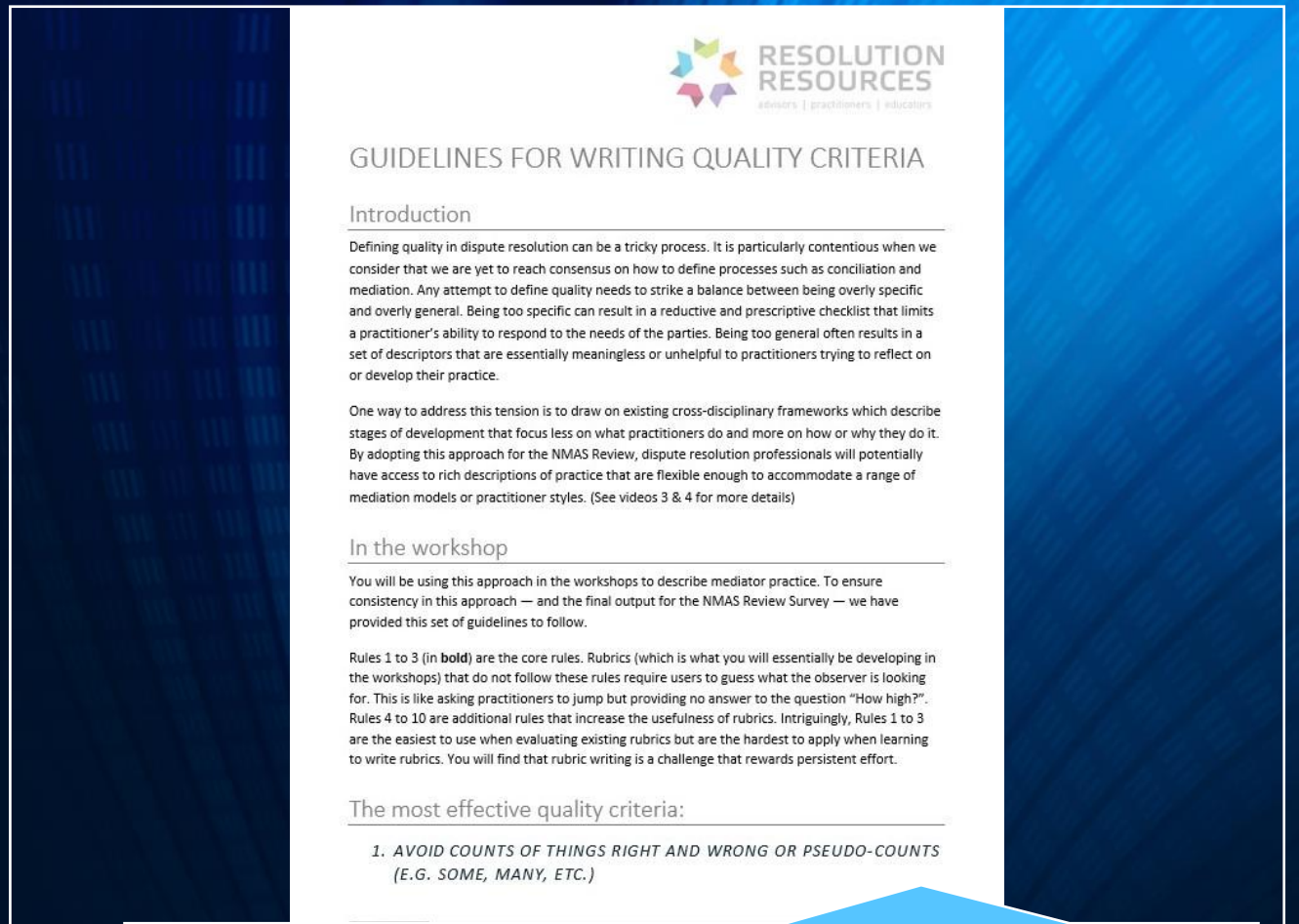
NMAS REVIEW 2020-21

Acknowledgment of Country

We would like to acknowledge the Traditional Owners and Custodians of the land on which we are gathered, and pay our respects to their Elders past, present and emerging

Overview

Guidelines



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GUIDELINES FOR WRITING QUALITY CRITERIA

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 the NMAS Review, 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. (See videos 3 & 4 for more details)

In the workshop

You will be using this approach in the workshops to describe mediator practice. To ensure consistency in this approach — and the final output for the NMAS Review Survey — we have provided this set of guidelines to follow.

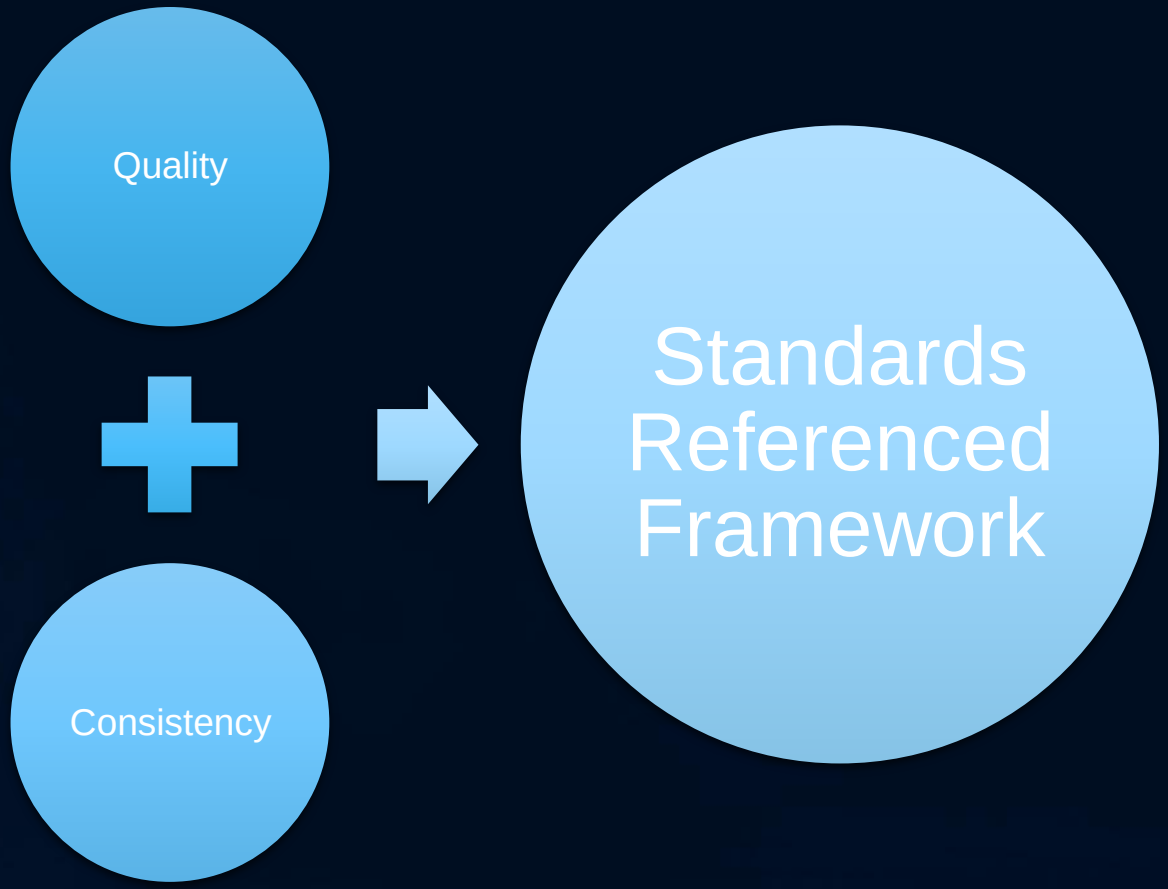
Rules 1 to 3 (in **bold**) are the core rules. Rubrics (which is what you will essentially be developing in the workshops) that do not follow these rules require users to guess what the observer is looking for. This is like asking practitioners to jump but providing no answer to the question "How high?". Rules 4 to 10 are additional rules that increase the usefulness of 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:

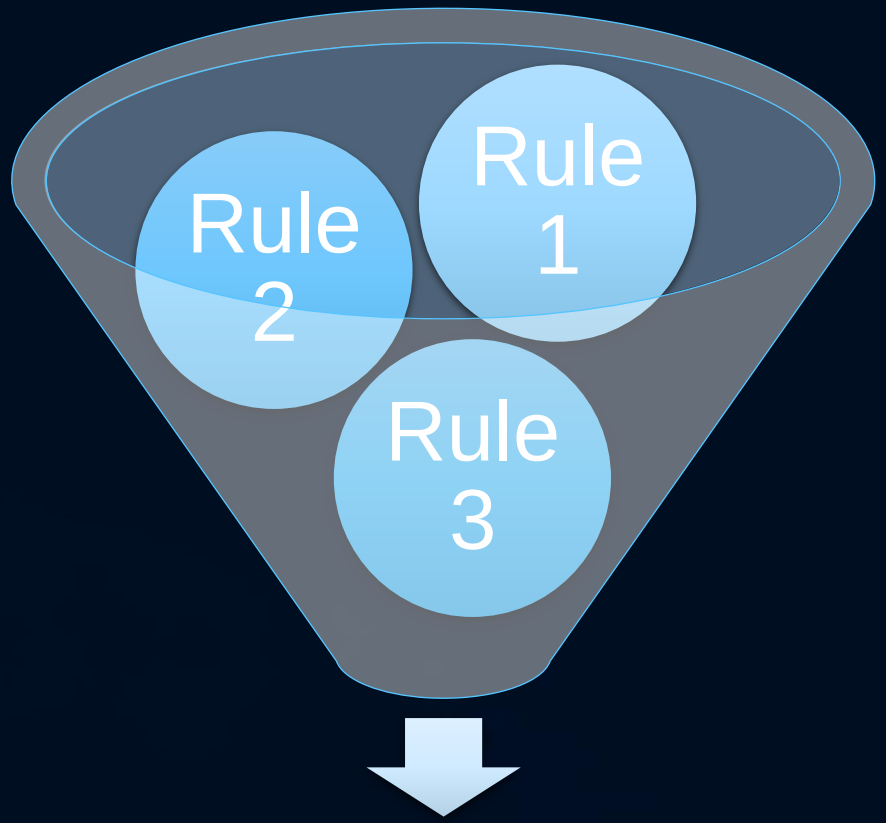
1. *AVOID COUNTS OF THINGS RIGHT AND WRONG OR PSEUDO-COUNTS (E.G. SOME, MANY, ETC.)*

Guidelines for Writing Quality Criteria

Purpose



Essential



Valid and Reliable Standards

Rule 1

Avoid Counts or Pseudo Counts

100% correct

50% Correct

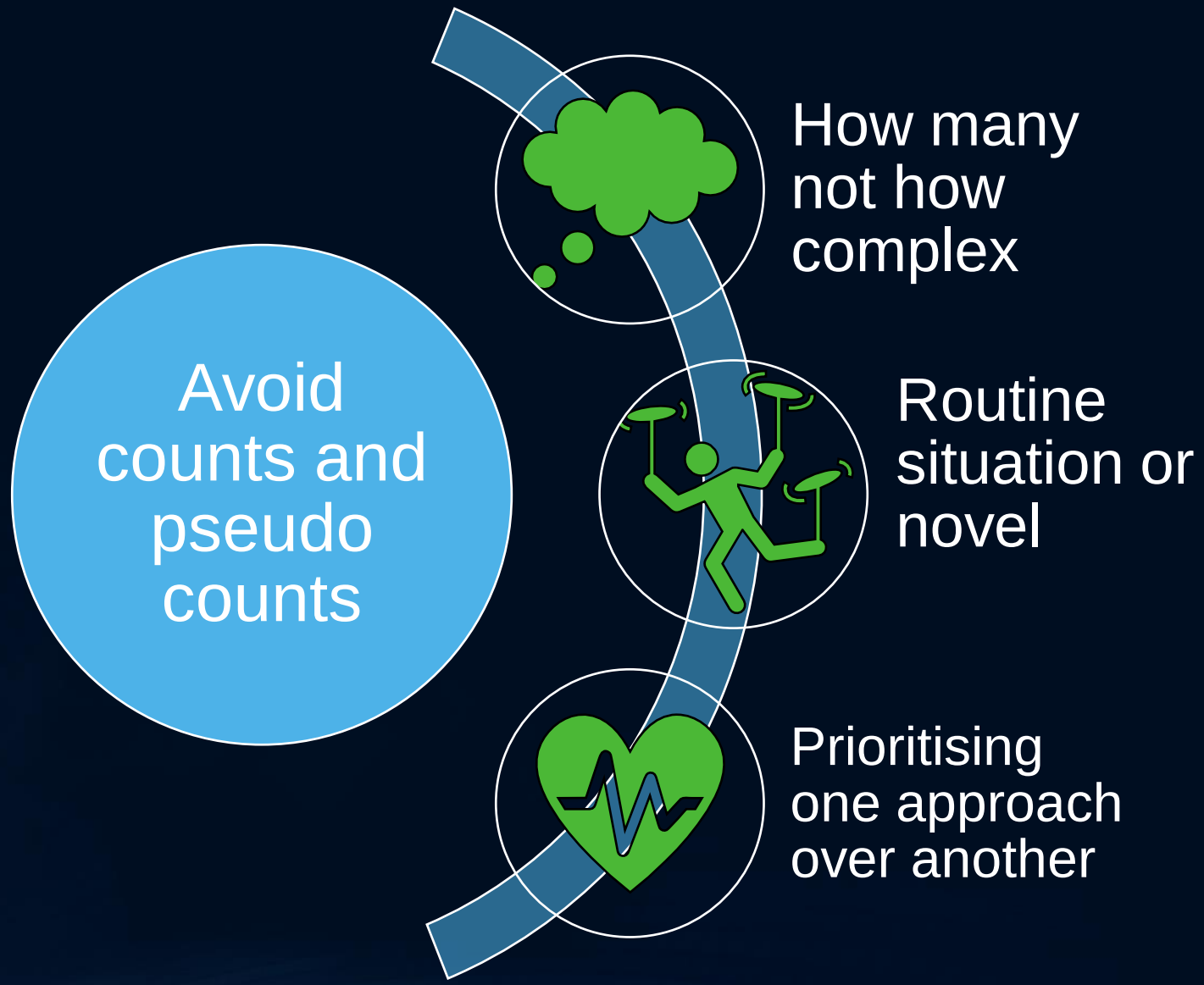
5% Correct

Always	Sometimes	Never

Fetched x 1

Fetched x 2

Fetched x 3


Avoid counts and pseudo counts
How many not how complex
Routine situation or novel
Prioritising one approach over another

Manages parties' emotions

Flawed

3. Always manages parties' emotions

2. Sometimes manages parties' emotions

1. Never manages parties' emotions

Manages parties' emotions

Improved

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. Creates opportunities for parties to express their feelings about the issues in dispute

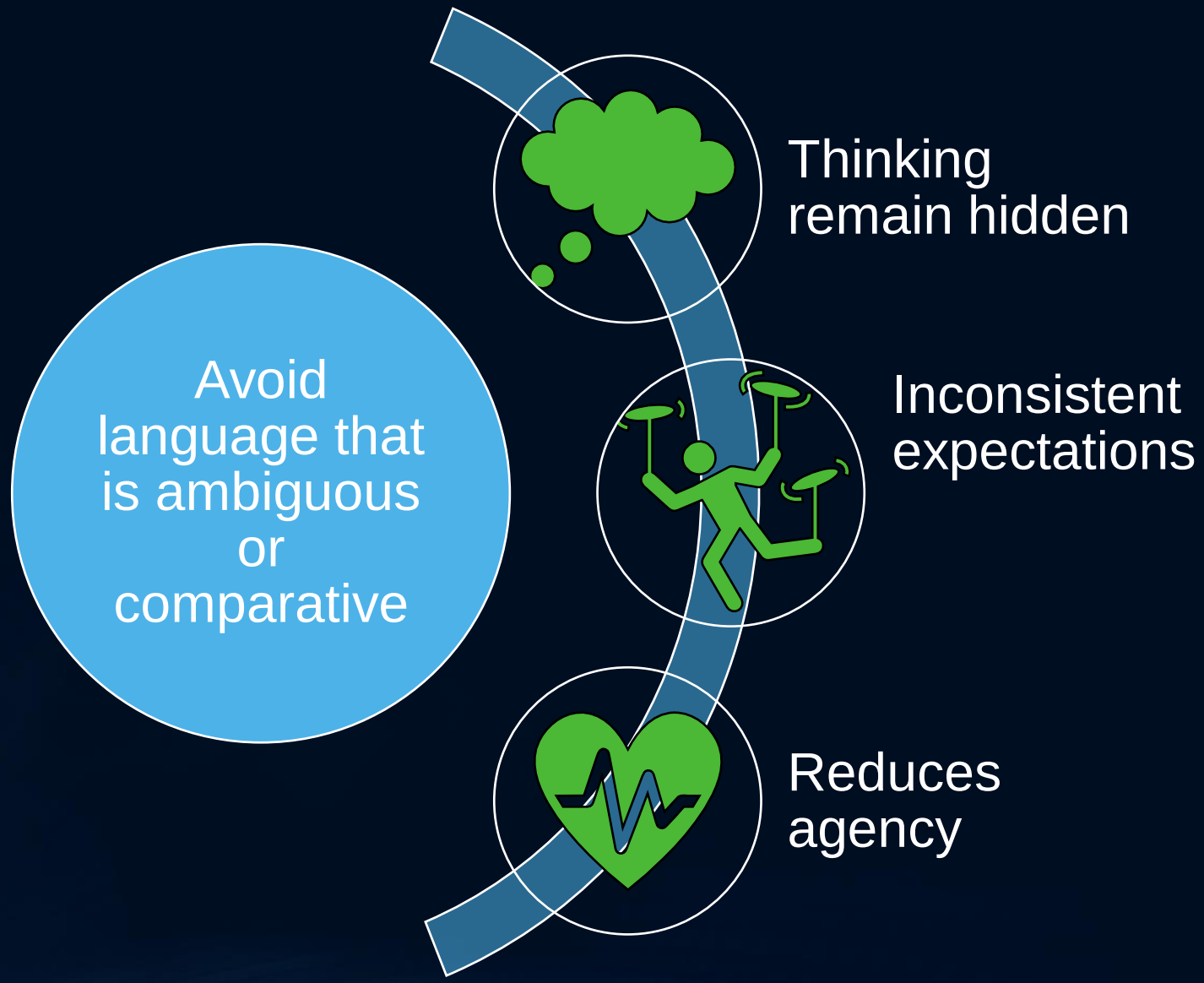
1. Acknowledges parties' emotions

Rule 2

Avoid language that is ambiguous or comparative

Best	Better	Good

Effective	Acceptable	Inappropriate


Avoid language that is ambiguous or comparative
Thinking remain hidden
Inconsistent expectations
Reduces agency

Asks Questions

Flawed

3. Excellent questioning skills

2. Good questioning skills

1. Adequate questioning skills

Asks Questions

Improved

3. Matches question type e.g. open, pointed or closed, to the type and scope of information sought

2. Uses open ended questions

1. Asks clarifying questions

Rule 3

Avoid procedural steps describing a sequence of operation

Sponge Bob

- Cook cake
- Ice Cake
- Present Cake

Sponge Bob

- Cook cake
- Ice Cake
- Present Cake

Sponge Bob

- Cook cake
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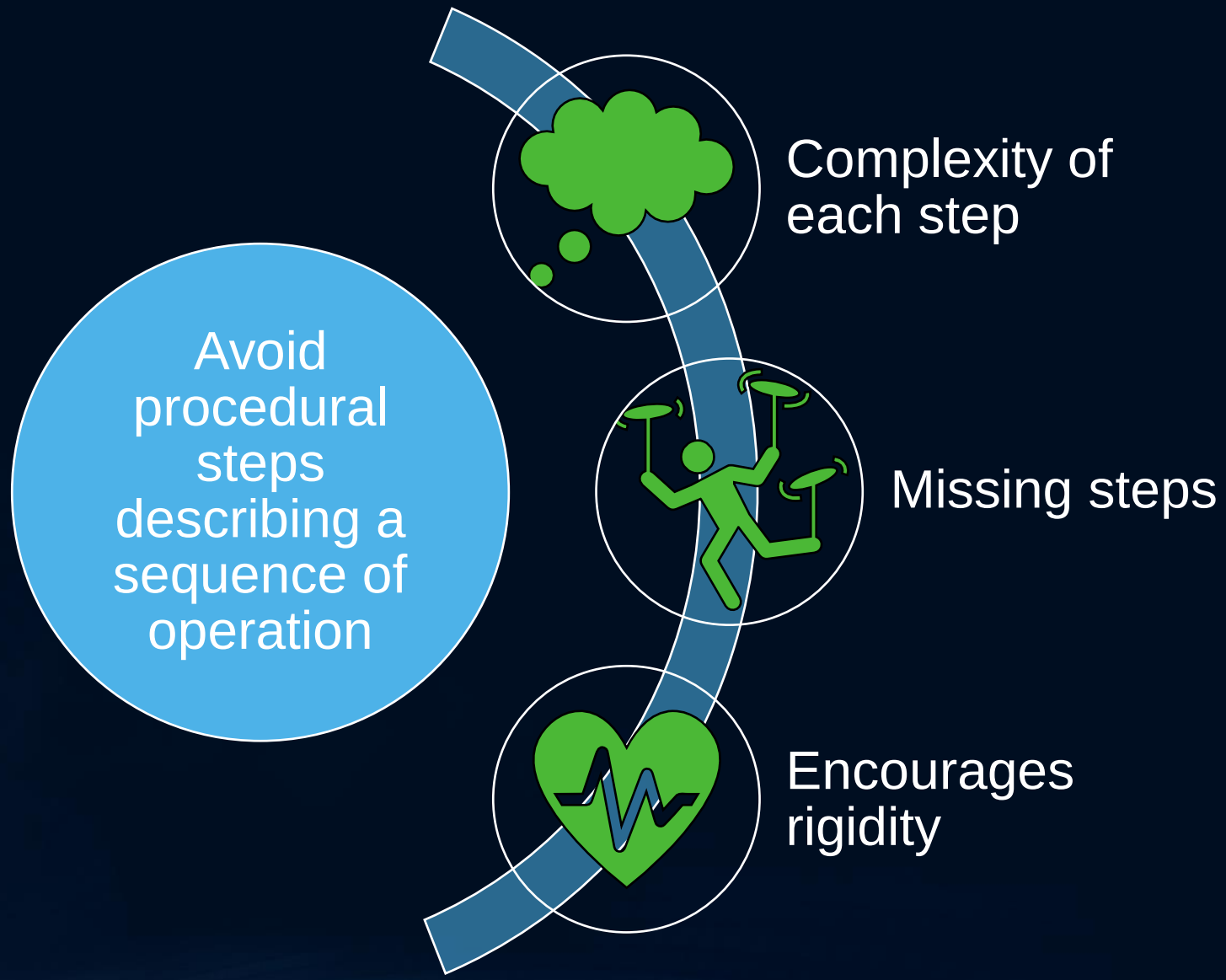

Avoid procedural steps describing a sequence of operation
Complexity of each step
Missing steps
Encourages rigidity

Facilitates mediation process

Flawed

3. Completes Stage 3: Facilitates negotiation and agreement

2. Completes Stage 2: Facilitates private sessions and option generation

1. Completes stage 1: Facilitates opening statements and explores issues

Facilitates mediation process

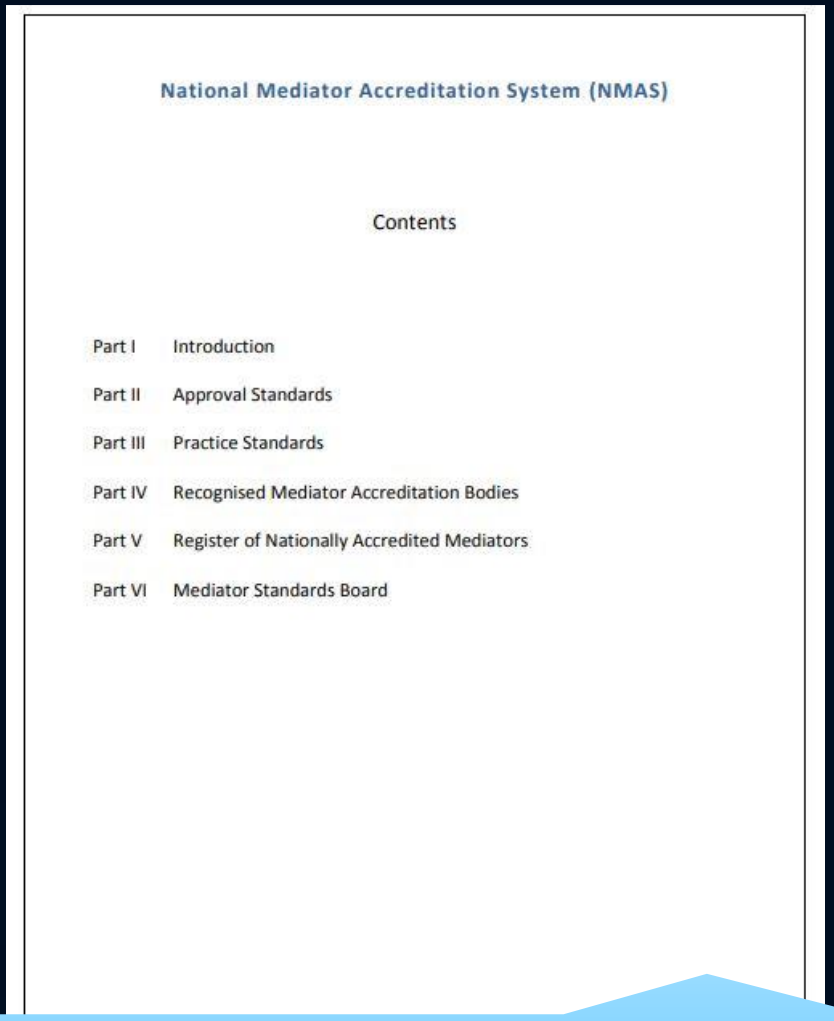
Improved

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. 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. Adheres to the prescribed mediation process

Next Steps



National Mediator Accreditation System (NMAS)

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Part V Register of Nationally Accredited Mediators

Part VI Mediator Standards Board

National Mediator Accreditation System (NMAS) Document

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DEVELOPMENTAL SCALES FOR MEDIATION

Overview

The following tables provide a snapshot of knowledge, skills and attitudes as they typically develop in mediators. Not every mediator starts in the same place, and development is not strictly linear. However, these tables can provide an indication of the typical behaviours that mediators may display at different stages of their professional development. These tables can be used as a general guide or can inform the development of quality assurance frameworks for specific dispute resolution programs or mediation models.

General Use

Use these tables to identify the knowledge, skills and attitudes that you currently demonstrate in relation to mediation. To do this, highlight each of the behaviours that best represent your usual or everyday practice. Look for the stage(s) within each table that contains the most behaviours – this will indicate your general level within each of the scales. You can use this information as a baseline against which you can set goals and monitor progress over time. Create a routine where one or twice a year you repeat this process. By doing this you will be able to reflect on the extent to which your practice has grown. It is important to be aware that some disputes or circumstances will not require you to demonstrate the knowledge, skills or engagement described at the highest stages. Within this context, you are encouraged to highlight only the knowledge, skills and attitudes that you have had the opportunity to demonstrate.

Stages of knowledge, skills and attitudes

STAGES OF UNDERSTANDING AND COMPLEXITY OF THINKING

The *stages of understanding and complexity of thinking* relate to the differing levels of complexity with which a mediator grasps and applies the knowledge, concepts and theories associated with mediation. The scale draws upon the model first developed by Biggs and Collis[1].

Table 1: Biggs & Collis and Mediation

Stage of development	Description
Prestructural	At this stage mediators perceive issues or conflicts that do not exist or, alternatively, fail to recognise conflict or issues in dispute. They avoid questions from parties or about mediation generally, repeating questions or information already provided, or seek closure based on a 'guesstimate' about a mediation theory, process or outcome.

Developmental Scales for Mediation

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Guidelines for writing quality criteria

Rule 1, Rule 2 & Rule 3

Diverse Practitioners

- First Nations
- CALD
- LGBTQIA+
- Age
- Non-accredited

Different Processes

- Mediation
- Conciliation
- FDRP
- Hybrid
- RJ

Different Fields

- Legal
- HR
- Education
- Land

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Thank you for watching

We look forward to working with you