

# The Influence of Legislation and Regulation on Strategy in Public Entities

Kasavan Govender, Enaleen Draai\* and Derek Taylor

*Nelson Mandela University, Port Elizabeth, South Africa*

**Abstract:** In terms of prescriptions contained in the Constitution of the Republic of South Africa, 1996, citizens are entitled to, *inter alia*, the provision of services in a sustainable manner. Citizens are also entitled to the promotion of social and economic development to meet their basic needs. Government designs systems and processes to meet those needs in response to policy goals and objectives as defined in legislation and regulation in the context of the principal-agent approach. Similarly, strategy is needed to devise techniques and plans to meet needs, goals and aspirations of government in the most efficient manner. It is premised on leadership, goal orientation and satisfying a multitude of factors in the process. At face value it would seem that the enactment of certain legislation and regulations appear to render the need for strategy obsolete, especially since there is a proliferation of national, provincial and local policies and strategies that only need implementation. This article reviews the influence of legislation and regulations on strategy in public entities, focusing on a development corporation in the Eastern Cape as a case study. For purposes of data collection a mixed-methods research methodology approach was followed. The article concludes with a proposed normative model to enhance strategy in public entities.

**Keywords:** Strategy comprises of the analysis, development, implementation and monitoring of goals and objectives.

**Legislation** is the exercise of the power and function of making rules (as laws) that have the force of authority by virtue of their promulgation.

**Regulations** are authoritative rules dealing with details, procedures, rules or orders issued by an executive authority or regulatory agency of a government and having the force of law (Govender 2018).

## INTRODUCTION

The powers for planning nationally, provincially and locally are contained in Schedules 4 and 5 of the functional areas of concurrent national and provincial legislative competence in the 1996 Constitution. South Africa also has numerous aspirations as contained in various previous strategies, for example, the Reconstruction and Development Programme (RDP) of 1994, the Growth, Employment and Redistribution (GEAR) strategy of 1996, the Accelerated and Shared Growth Initiative for South Africa (ASGISA) of 2005, the New Growth Path (GNP) of 2010 and more recently, the National Development Plan (NDP) 2030 published in 2013. Likewise in June 2014, a 12-point Outcomes approach for 2014 to 2019 was adopted as the first of three phases to deliver on the NDP 2030 (Govender 2018). Various other policy proclamations are

contained in State of the Nation addresses, the Medium-Term Strategic Framework (MTSF) and various other strategies and policies. These documents collectively form the strategic direction for South Africa. However, increased dissatisfaction expressed by citizens in service delivery protests implies that the promulgation of enabling legislation and the articulation of strategic goals and objectives are often not realised. It can be argued that strategies and plans are either not prepared properly or are not implemented correctly (Dlamini 2016).

The relationships between strategy, planning, budgeting, the public sector and politics within the bureaucracy are generally defined in terms of the minimum standard. They are contained in various legislative prescriptions, regulations, policies and practices. However, little is known of their interrelationship or the influence that the legislative regulatory design of government processes has on strategy, especially in public entities. It appears that there is no model or consensus (in public entities) on how to ensure that strategy is practised and actions could therefore be misguided or be ineffective in their current form (Govender 2018).

The principle used in crafting and implementing strategy and the environment or public administrative paradigm where strategy happens are bound to each other and, when used effectively, they have the potential to maximise the attainment of societal goals. The legislative, regulatory and operational contexts are part of the new public management (NPM) theory

\*Address correspondence to this author at the Nelson Mandela University, Port Elizabeth, South Africa; E-mail: enaleen.draai@nmmu.ac.za

which, at face value, has tensions with the notion of governance and the post-NPM theory and what is currently being bandied as government's approach (Christensen 2012). Governance and the post-NPM theory, in the context of a public entity, need to be observed and their influence assessed since they affect strategy, especially when variables such as information, networking, managerialism, devolution and decentralisation, at a first glance, might render strategy obsolete (Govender 2018). The primary aim of the study was, *inter alia*, to investigate the influence of changing public administrative paradigms with particular emphasis on the role that legislation and regulation play regarding strategy in public entities.

The study was based on the assumptions firstly, that strategy is the cornerstone to the achievement of goals and secondly, that legislation and regulation are restrictive, constrictive and restrain public entities in designing solutions to achieve goals and by their mere conception, application and audit are at odds with strategy. For purposes of the study the following hypotheses were proposed: (i) While goal achievement is the end state, strategy development and management are the means and these are restricted by various legislative prescriptions and regulation; and (ii) whilst current legislation and regulation cannot be removed from the strategy environment, the practices can adopt an alternative model for strategy in public entities for the successful achievement of predetermined goals.

### **Strategy Contextualised**

There are numerous definitions of methodologies and approaches to strategy. Strategy in the context of this article comprises the analysis, development, implementation, and monitoring of goals and objectives. Strategies are interwoven by both the best of the public and private sector and vice-versa, the relatedness and impact of the achievement of goals in public entities, especially when superimposed with the real intention of policies, regulations and frameworks (Frederick 2011). It has been mooted that government should enact a single overarching law governing all state-owned entities (Govender 2018). On the other hand, strategy in public entities is not as a result of a planned and systematic approach but rather a result of the broader reforms and approaches to politics (Steuer 2007). There needs to be a balanced approach to strategy juxtaposed with the operations of service or product delivery by government. These approaches, either on the upswing or decline, have serious

implications for the strategy, especially when, according to Mintzberg, Ahlstrand and Lampel (1998), there is no consensus on what form strategies should take. This indicates that the practice is volatile and contested yet can seemingly be routine, especially in a regulated environment.

### **Understanding the Root of Public Entities and Strategy**

There are two fundamental theories in the NPM theory, which provide for a theoretical underpinning. These are the public choice theory and the principal-agent theory (Hood 1991; Gruening 2001; Den Heyer 2011). Hood (1991) suggests that the NPM emanates from post-World War II, public choice theory, transaction cost theory and principal-agent theory. Hood (1991) further proposes that these theories are closely linked to the successive waves of managerialism and the theory of bureaucracy or they reflect the evolving public administrative paradigms of nations. Managerialism is, therefore, a strong factor and is closely related to strategy. Den Heyer (2011) postulates that the NPM is founded on five theoretical microeconomic frameworks, namely public choice theory, principal-agent theory, transaction cost theory, technical rational theory and institutional theory. However, in the neo-classical era and more especially in post-modernisation, concepts such as information, governance, democracy, value-for-money, justice, politics, transparency, religion and other social factors add to the complex overlay of managing public expectation for service delivery and the notion of an effective state (Sandu and Haines 2014).

There are four issues that need to be considered when examining NPM and strategy. Brown (2010) states that in order for strategising to be successful despite the above limitations, managers need to have access to an important resource, namely information. In the instance between agent and principal, as in public entities, information asymmetry can lead to an unfair advantage by managers (Heath and Norman, 2004). The second element is that of managerialism and related issues. Govender (2018) citing Kaul (1997) suggests that in the quest for results, managerialism, decentralisation, devolution and fragmentation need to have taken place ensuring that results measure performance, devolve resource control, strengthen monitoring and clarify incentives. Thirdly, according to Promberger and Rauskala (2003), to facilitate and breakdown bureaucracies, smaller decentralised units are needed that would be more efficient and

accountable to the public. This approach entails the principal-agent or agency theory responsible for the formation of public entities. Lastly, another key component of NPM is the proliferation and array of regulatory frameworks in financial and personnel management. The aim of regulation is control and greater self-control, which have limitations and create tension between the political and profession spheres of bureaucracies (Shapiro 2005).

The principal-agent theory is also a major contributor to the trioka relationship between strategy, legislation and regulation and public entities. It has been established that strategy in the public sector emerged through the introduction of private sector management principles by way of the NPM approach (Brown 2010). Otungu, Nyongesa and Kaburi Simeon (2011) define this as an individual (the agent) acting on behalf of another (the principal) and the agent is required to advance the principal's goals. Sandu and Haines (2014) suggest that 'agencification' refers to semi-independent agencies, (theoretically) separated from the political pressures and autonomous from a central structure but having management liberty. The agents take their lead from government regulations as found in their own public entity's founding legislation, as for example the PFMA (in section 52) and Treasury Regulations.

Johanson (2009:883) states that "...the main role of strategy in the governance model is to formulate principles for identifying possible interaction partners and the establishment of appropriate interaction patterns". That being said, governance of a political-administrative system is a form of the post-NPM construct and is meant to gradually counteract the disintegration or fragmentation brought about under the NPM as well as restoring public sector organisations to a situation of greater integration and coordination (Christensen 2012). For the purpose of this article, strategy is defined as being a choice between two approaches, namely to become a one-dimensional intermediary between a multiplicity of society, economism and new liberal public administration or to convey a variety of views and uphold a multi-dimensional discourse so as to bring to bear a deliberate democracy into planning documents and recommendations (Govender 2018). A recent study was undertaken by the authors to investigate the influence of legislation and regulations on strategy with specific reference to public entities. An overview on the research methodology employed for purposes of data collection now follows.

## RESEARCH METHODOLOGY

The study was undertaken using a mixed-methods research approach and a development corporation served as a case study. Techniques to gather and analyse data included semi-structured interviews, questionnaires and document analysis. The research methodologies were chosen because they addressed the research problem adequately and aided in developing new approaches to strategy in public entities and to sharing experiences. The research results were validated through the process of triangulation. For purposes of this article the convergent design (Creswell and Clark 2011) or concurrent triangulation strategy (Terrell 2012) was used for primary data collection. These sets of data were validated by way of triangulation with the express aim of answering the research questions.

### Respondent Samples

For purposes of the qualitative study, a total of 28 semi-structured interviews was undertaken as this method allows for flexibility in the interviewing of people with limited time and who are often involved in complex decision-making processes. This approach can elicit 'rich' and 'deep' information in a short period of time. Participants for the empirical component of the study consisted of executives and senior managers and the table below provides a synopsis of the sample population.

### Strategy, Legislation, Regulation and Public Entities

Findings from the study suggest that strategy in public entities and the prevailing public administration system are the flip sides of the same coin. In this regard strategy determines the direction and goals while the system provides the conduit to marshal the achievement of goals and the intended outcome, namely the goals themselves (Govender 2018). The public administration system is akin to the regulations and legislation. According to Andrews, Boyne, Law and Walker (2007), the defining characteristic of public organisations is the presence of regulatory constraints imposed by the government. Such constraints have conventionally been associated with accountability requirements in the public sector and the need to ensure probity and equity which are meant to improve service delivery. According to the Merriam-Webster Dictionary (2011), legislation is the exercise of the power and function of making rules (as laws) that have

**Table 1: The Following Outcomes Emerged from the Findings**

No.	Respondent group	Average sampling frame	Sample size	Data-gathering instrument	Sampling method
Pilot test the survey instrument					
1	Public Entity A- ECDC				
	Executive Management	6	4	Pilot Questionnaire	Quota sampling
	Senior Managers	15	10	Pilot Questionnaire	
Refine the instrument within the case study and then apply.					
Apply the instrument					
2	Public Entity B- MEGA				
	Executive Management	6	4	Questionnaire	Quota sampling
	Senior Managers	15	10	Questionnaire	
3	Public Entity C- LIMDEV				
	Executive Management	6	4	Questionnaire	Quota sampling
	Senior Managers	15	10	Questionnaire	
4	Public Entity D-FSDC				
	Executive Management	6	4	Questionnaire	Quota sampling
	Senior Managers	15	10	Questionnaire	
5	Public Entity E- WESGRO				
	Executive Management	6	4	Questionnaire	Quota sampling
	Senior Managers	15	10	Questionnaire	
6	Public Entity F- ELIDZ				
	Executive Management	6	4	Questionnaire	Quota sampling
	Senior Managers	15	10	Questionnaire	
7	Public Entity F- COEGA				
	Executive Management	6	4	Questionnaire	Quota sampling
	Senior Managers	15	10	Questionnaire	
8	Public Entity F- TIKZN				
	Executive Management	6	4	Questionnaire	Quota sampling
	Senior Managers	15	10	Questionnaire	
	TOTAL	168	112	66%	

the force of authority by virtue of their promulgation by an official organ of a state or other organisation. Regulations, on the other hand, are authoritative rules dealing with details, procedures, rules or orders issued by an executive authority or regulatory agency of a government and having the force of law (Govender 2018). Both these exert pressure and affect leadership, operations and management of public entities since they are laws. Public entities are also created by legislation to be juristic persons and account to parent provincial government departments. It is these legislative and regulatory frameworks that form part of a greater public administrative or management paradigm that influences strategy.

According to Lienert (2005), laws supplement written constitutions and are meant for two major reasons in governing public management, namely to specify sound general principles or to address specific problems. On the other hand, 'agencification' introduces fundamental changes in the way state budgets are prepared and reported to Parliament. According to Heydenrych (2012), South Africa has taken a neo-liberal stance in the pursuit of a market-led economic approach to local government in particular. Heydenrych (2012) postulates that the state has opted for a neo-liberal growth path tied to the commercialisation of service delivery which has implications for the creation of public entities that actually bring about implementation. All these are

**Table 2: Source: Authors' Own Construct (2018)**

PFMA	Treasury regulations	ECDC Act
Ownership, power and Control	Active shareholder participation	Leadership and constantly shifting focus
Leadership	Timeframes	Shifting focus in addition to a multitude of focus areas

meant to bring about a 'production engineering' in public service delivery and are often linked to doctrines of economic rationalism. According to Louw (2012), the South African version of NPM was seen as an administrative agenda that included privatisation, deregulation and the re-conceptualisation of the appropriate role of a government in the economy and society. The manifestations of decentralisation, contracting out and corporatisation then resulted in the creation of legislation and regulations because, unlike the private sector, the state in whatever form delivers to citizens who require accountability for spending.

**Documentary Analysis**

From an analysis of the Public Finance Management Act 1 of 1999 (PFMA), Treasury Regulations and the Eastern Cape Development Corporation Act 2 of 1997 (ECDC), the following emerged as key areas when considering strategy in public entities:

**Responses from Managers on Legislation, Regulation and Strategy**

In terms of the empirical survey conducted for purposes of data collection, the administration of questionnaires to the selected senior management respondents proved to be a challenge owing to the profiles and availability of the participants. Nonetheless, both an email and web-based approach were adopted to ensure that respondents did participate. From the analysis of the findings it was clear that in public entities there is a relationship between legislation and regulations on the one hand and strategy on the other. This is especially evident with respect to the following variables: firstly, whether legislation and regulation assist in the manner in which strategy is formulated; secondly, whether strategy revolves around the implementation of legislation and regulations; thirdly, whether strategy is a mere compliance process and there is a no need to form strategy but rather implement the founding legislation of entities.

The general sentiment was that legislation and regulation, especially from the perspective of the

entities, are helpful, assist with strategy and are not merely the implementation of Acts and regulations that form strategy. In terms of the open-ended questions in the questionnaire, there were mixed views on the subject. Answers were predominantly critical of the legislation and regulation indicating that they were more of a hindrance than of assistance. Reasons cited as to why strategy appears ineffective were a poor understanding of the environment in which strategy occurs, who is involved in strategy, leadership vacuums, compliance and who controls the financial resources and communication.

When asked whether the legislative environment is restrictive, 54% of the respondents agreed that the legislative and regulatory environment was restrictive while 25% responded that it was not and 21% remained neutral. The main arguments offered were once again that compliance trumps innovation and flexibility while legislation and regulations should be a guide. Likewise, when asked whether legislation and regulation should be considered before or after strategy, 54% agreed that legislation and regulation should be considered before strategy is developed in the public entity. Only 13% indicated post-strategy with compliance being a major factor and 33% were neutral. Lastly, regarding the influence of the shareholder, 38% of the respondents indicated that the shareholder or principal does allow for innovation while 32% indicated that innovation was restricted, especially since resources are involved and 30% were neutral. This factor is balanced. However, it is clear that there is major contestation for this space.

The overall impression is that legislation and regulations experienced in public entities are restrictive, especially regarding areas of compliance, innovation and financial resource allocation. Legislation and regulation are cited as being assistive in the manner in which strategy is formulated whilst strategy revolves around its implementation. Respondents also rejected the notion that strategy is the implementation of legislation. However, this issue must be read in the light of compliance, innovation and resourcing. The overall impression from the empirical survey is that

legislation and regulation as experienced in public entities are restrictive especially regarding areas of compliance, innovation and financial resource allocation. Legislation and regulation are cited as being assistive in the manner in which strategy is formed whilst strategy revolves around its implementation. Strategy was considered to be restricted owing to compliance taking first place while the shareholder(s) restricted innovation owing to control over budgets.

**Recommendations on Public Entities and Shareholders**

**Normative Model on Strategy in Public Entities**

The study investigated the influence of legislation and regulation on strategy. The proposed normative model reflects the interaction between the public administrative regime, legislation and regulation and their impact on strategy on the one hand, and the outcomes of the application of the research methodology on the other. Apart from and within the legislative, regulatory and planning processes that exist between the principal and public entities, and depending on whether these six factors are considered in the process, the model is meant to ensure that the outcomes will be better strategies. This will possibly negate the influence of legislation and regulation on strategy in public entities. These factors include

consideration of the public administrative system, collaboration, leadership, flexible compliance, resources and innovation.

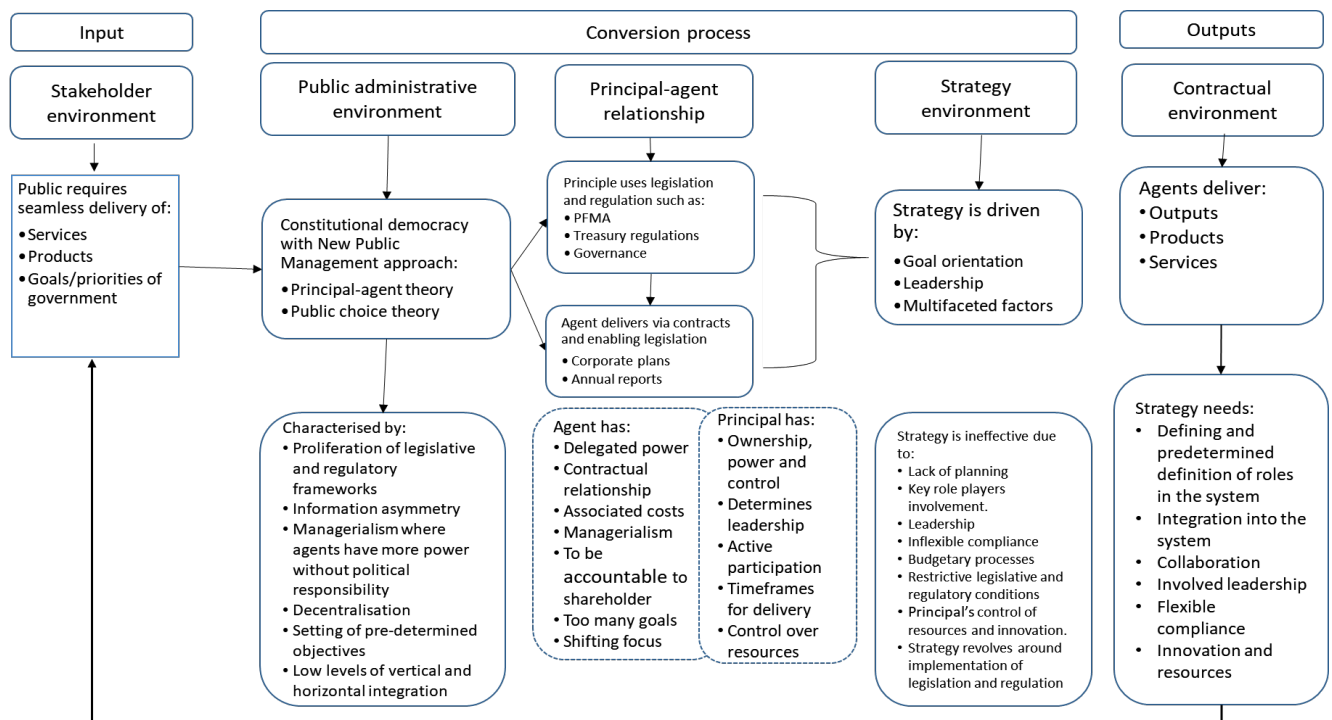
**Defining the Nature of Strategy and Predetermined Definition of Roles**

The findings from the study indicate that the NPM model in South Africa in its true sense is skewed and institutional economics, especially with the public choice theory and business-type managerialism, have not taken root in public entities. This can be illustrated by the notion of state capture where the bureaucracy and public entities are interchangeably the same. The implication for strategy is that strategy is decided elsewhere and is neither goal-orientated nor leadership-centred. Furthermore, the role of government and public entities with respect to strategy is blurred and in most cases indistinguishable from other organisational processes. The study also deduced four implications for strategy, namely that strategy is characterised by information asymmetry, uncollaborated across government and within sectors, being silo-orientated and heavily legislated.

**Integration of strategy**

Participant responses revealed that in most cases strategy was formed elsewhere and provided to the public entity to implement and as such, public entities

**Table 3: Normative Model: Source: Authors' Own Construct (2018)**



should tow the line. The setting of pre-determined objectives in a way negates strategy and is self-fulfilling. The NPM and the public choice theory appear to 'straightjacket' the public entity. The research points to the fact that strategy has become a contractual relationship of a special kind espoused in legislation and regulations. Furthermore, it is predetermined and costly, especially with respect to information and governance as well as being shrouded with managerialism.

### **Strategy Needs Collaboration**

The findings from the study suggest that strategy appears to be narrowed and tapered, turning public entities into delivery mechanisms rather than thinking and adapting public entities meant to develop and implement strategy. Likewise, strategy has been set to a time frame that is top-down, disjointed and mismatched in terms of government planning schedules. What is needed is collaboration. Rosenbloom (2013) maintains that collaborative governance is a convergence of ideas and solutions and the best vehicle is not a principal-agent approach but rather a collaborative approach to redefine the roles of management, politics and law so that the best interests of the citizens, rather than those of the customer, are prioritised.

### **Strategy and Leadership**

The research found that leadership turnover, especially at governance and management levels, remains high. Likewise, the outcomes of the semi-structured interviews (as part of the qualitative study) pointed to the fact that strategy is ineffective when key role players are not involved. Participants also recommended that key role players' involvement and consultation are important as well as improved methodologies to undertake strategy in public entities. The choice to apply these recommendations rests with good leadership. Similarly, according to the responses of the opened-ended questions, participants highlighted the importance of who is involved in strategy as well as that of leadership.

### **Flexible Compliance**

Minzberg and Waters (1985) contend that the strategy process tends to be a process where strategy is deliberate and intended as in government. During the semi-structured interviews, one of the dominant themes was that legislation and regulation restrict flexibility, especially with respect to the movement of priorities

and targets. Likewise, another reason why strategy seems to be ineffective is compliance with legislation and regulation. These results indicate that while legislation and regulation are compliance driven, respondents also support the fact that strategy, by definition, is not mere implementation of legislation and regulation.

### **Resources and Innovation**

The study revealed that there are interlinked factors, especially in the relationship between the principal and agent. Respondents stated that the principals control the budget that affects innovation and that annual plans create little room for innovation. The invariable link between the government's planning process that occurs almost one year in advance and budgeting gives precedence to budgeting over strategy. Legislation and regulation are on the side of accountable and transparent spending rather than on the quality of plans and strategy, especially in public entities (Govender 2018). The overall sentiment from respondents in the open-ended questions emphasised that budgeting does not allow for innovation, and that compliance to the shareholder trumps over innovation. Respondents also stated that risks and output-based restrictions, compliance and the need for long-term planning restricted innovation.

### **CONCLUSION**

There are numerous ways in which strategy can be implemented. However, in the context of delegated service via a representative to citizens, it requires a more relational management approach (within limits) compared to the legislative or regulatory role. The study revealed that leadership, roles, integration, collaboration and innovation are not products of legislation but rather of regulation. The need for a closer and fostered relationship between principal and agents for the betterment of citizens and service delivery also emerged as an outcome of the research. As part of the normative model, one of the ways in which resources and innovation challenges can be overcome is through having more short-term plans and through monitoring. Short-term plans are more easily adjustable while monitoring would ensure that the crucial delivery of products and services is undertaken.

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