MEMORANDUM

1. Judges are by statute required to belong to Parmed. This obligation endures for their entire life as they are employed for life and as the statute requires judges who are employed to belong.
2. Judges are not dealt with in section 9 of the Remuneration of Public Office Bearers Act number 20 of 1998 which regulates the rights of office bearers to receive medical aid benefits. There is no equivalent section in the act dealing with remuneration for judges. Whereas members of Parliament are entitled as part of the salary package to receive medical aid benefits from the medical aid scheme to which they contribute (Parmed) there is no equivalent for judges. Judges are in receipt of money identified as being the contribution of the executive payable to the medical scheme as portion of the salary they receive. Currently parliamentarians notwithstanding the provisions of section 9 appear to be in receipt of money rather than a medical aid scheme as part of their salary. (The statutory obligation on the employer referred to in section 9 should probably be repealed.)
3. Historically (at the time of Moseneke DCJ heading the salary commission) the contribution towards Parmed which was paid by the employer was approximately 2/3 of the total contribution levied by Parmed. Currently the contribution towards Parmed which is paid by the employer is approximately 1/3 of the total contribution levied by Parmed. This has come about due to the annual contribution increases levied by Parmed exceeding the annual salary increases. This situation has led to an income/cost pressure as the members of Parmed are experiencing an obligation to make payment of a significant amount the bulk of which is not recouped from the employer.
4. Parmed has always provided extensive benefits to the members. The benefits when they are compared to the benefits provided by commercial companies are among the most extensive. Only 3 or 4 companies offering benefits commercially offer similar benefits. In simple terms, Parmed offers amongst the best available benefit. As the benefit is extensive it costs more money to provide. The cost of the benefit when it is compared with the cost of commercially available equivalent benefits is competitive. Parmed has prepared a benefit comparison of itself and those competitors which demonstrates this point. The most recent comparison which I have is dated August 2017.
5. Once it is accepted that the benefit offered by Parmed is competitive the only issue for consideration is whether or not such an extensive benefit is one that the members want. If the members want a lesser benefit at a lesser cost then the members could consider changing the benefits which Parmed provides. Members should not simply decide to destroy Parmed if they want different benefits at a different cost.
6. Parmed is a closed scheme which offers membership to a limited number of persons who are obliged to be members. If its status is changed to an open scheme (i.e. members who want to join may join and those who do not need not) it will not be commercially viable. All the advice the board of Parmed has received indicates this.
7. Parmed is unable to offer different sets of benefits to different sets of people. It is only able to offer one set of benefits to all. All the advice the board of Parmed has received indicates this.
8. If there is to be consideration given to changing the structure of Parmed the matters set out in paragraphs 6 and 7 above are of paramount importance. Parmed must have all the members it can and can only offer one benefit to all.
9. There is currently litigation concerning the constitutionality of the statute requiring persons to be members of Parmed. The litigation is brought on the basis that it is unconstitutional to compel persons to contract. The litigation is opposed on the basis that the section in the statute represents a term of the salary obligation of the employer.
10. The stress point seems to be that members regard the contribution they are required to make to Parmed as being too great an expense. The complaint as I understand it is not that Parmed does not represent value for money but rather that the amount of money required to spend out of a limited income is too much. This situation has arisen in consequence of the failure of the increases in salary to match the increases in contribution paid to Parmed over the years. The true position is that members are poorer not because Parmed is more expensive but rather because they receive a smaller income than they previously did compared to the cost of Parmed. I doubt that any member would voluntarily reduce the benefits paid to him if the contribution were paid as before compared to his salary as before.
11. The character of the payment received by judges and parliamentarians changed at the time of Moseneke DCJ. Whereas previously they had received the benefit of membership of a medical aid scheme they afterwards received payment of money which they were forced to apply to the medical aid scheme by reason of the statute. This change in character of payment resulted in them being deprived of the right to choose how to spend their money. If they wanted to buy a cheap medical aid they could not if they wanted the most expensive medical aid they similarly could not: all they could do was spend the money to buy the scheme offered by Parmed. With the increasing costs to employee of the scheme members also discovered that they could not afford to place their entire family on the scheme as it simply cost too much money. This led to an emotional reaction in that members had to choose who would belong to Parmed and who not. In one family some members would receive benefit rich medical treatment due to the scheme and others not.
12. The problem of compulsion cannot be solved as it will result in the destruction of Parmed. The only solution to that problem is to reintroduce the medical aid scheme as the benefit to which judges/parliamentarians are entitled rather than the payment of money. It seems unlikely that the employer will ever reintroduce the scheme as a benefit.
13. The problem of expense can be solved by the employer increasing the contribution it makes to Parmed for each member. If the employer does this the gross amount payable by the employee for “medical aid” will be competitive with the amount the employee is required to pay to a commercial medical aid scheme in respect of which he receives no contribution from the employer.
14. When the problem is analysed this way it becomes obvious that if members refuse to be members of Parmed under compulsion then Parmed is not viable; if the employer increases the contribution it makes towards employees for “medical aid” then Parmed remains viable and can continue operation. If the employer refuses to increase the contribution it makes towards employees then it seems likely that the employees will refuse to belong under compulsion to the scheme offered by Parmed and will seek to join medical schemes appropriate and commercially acceptable to their needs.
15. Historically Judges were in receipt of a medical aid scheme benefit as part of the salary to which they were entitled. The salary may not be unilaterally changed by the employer and in addition it is unconstitutional to reduce the salary payable to a judge. The fact that Parmed and its structure may be unconstitutional does not reduce the obligation of the executive to make payment to judges of the contribution required to obtain an equivalent medical aid scheme to that which they throughout have had. If this premise is accepted then the executive is obliged not only to ensure that judges belong to a scheme offering similar benefits to Parmed but also to make payment towards the cost of those benefits as before. This means that to the extent the contribution paid by the executive is reduced from 2/3 to 1/3 that reduction is in itself unconstitutional and must be remedied by the executive.. The increases to the current salary structure are imposed on judges pursuant to the provisions of the Public Office Bearers Act. The judges have not agreed to payment of the lesser amount than that to which they historically have been entitled and whatever arrangements are made in respect of Parmed does not impact on that fact. If a decision is made impacting on the ability of Parmed to render the medical aid services which it to date has been alternative arrangements will have to be made for judges to receive an alternative medical aid and appropriate payment towards it.