

**The relationship between the
Parliamentary and Provincial
Medical Schemes Act
and
the Medical Schemes Act**



Comparison

Profmed Parmed Discovery

CMS is the responsible body

Medical Schemes Act applies

Scheme's choice: Restricted scheme Restricted scheme Open scheme

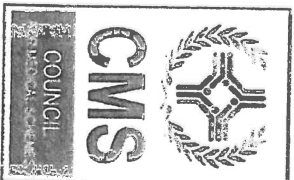
Legal consequences of choice: Sec 29(3)(a) + Sec 1 definition of a restricted scheme: Any one can join provided that they meet the eligibility criteria Sec 29(3)(a) + Sec 1 definition of a restricted scheme: Any one can join provided that they meet the eligibility criteria Sec 29(3)(a) any person may join

Contract between member and scheme: **Rules must be approved by Registrar and is binding**

Parmed is the only scheme with an Act providing for compulsory membership



Sec 29(3)(a) schemes may not provide in its rules for the exclusion of any applicant or a dependant of an applicant, subject to the conditions as may be prescribed, from membership except for a restricted membership scheme as provided for in the Act.



Restricted schemes

- Section 1 of the MS Act

“**restricted membership scheme**” means a medical scheme, the rules of which restrict the eligibility for membership by reference to -

- (a) employment or former employment or both employment or former employment in a profession, trade, industry or calling;
- (b) employment or former employment or both employment or former employment by a particular employer, or by an employer included in a particular class of employers;
- (c) membership or former membership or both membership or former membership of a particular profession, professional association or union; or
- (d) any other prescribed matter;

Parmed Act

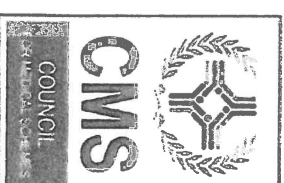
“shall, for as long as he or she holds that office or post, be a member of the Parmed Medical Aid Scheme, subject to the rules of that medical aid scheme as registered in accordance with the provisions of the Medical Schemes Act, 1967 (Act No. 72 of 1967): Provided that if any person and his or her spouse both qualify for compulsory membership of the said Scheme in terms of this section, only one of them shall be obliged to be such a member.”

CMS did not create nor does it administer the Parmed Act

The Parmed Act governs an employment relationship: “as long as he or she holds that office or post”

Membership is based on office or post (eligibility criteria)

In SA employers force members to join a specific scheme in terms of an employment contract or in order for the member to qualify for a subsidy.



- Other restricted medical schemes do not make membership compulsory.
- They simply say that you cannot join the scheme if you don't meet the eligibility criteria
- Members who meet the eligibility criteria of a particular restricted scheme may still choose to join any other open medical scheme.
- Where members are forced to belong to a specific scheme it is not done in terms of the MS Act or the registered rules of a scheme
- Employers use terms and conditions of employment which are similar to the provisions in the Parmed Act.
- It is easier to amend terms and conditions of employment than legislation.

Registered rules of Parmed

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"Employer", the Government, including Provincial Legislatures and the Parliament of the Republic of South Africa, as the case may be;

Eligibility criteria

MEMBERSHIP

6.1

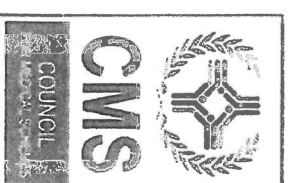
Current Members

Subject to the provisions of rule 8, the membership of the Scheme shall be compulsory* for and restricted to

6.1.1

While not being a member of either the National Assembly or the National Council of Provinces, a President, Deputy President or a Minister;

Y.M.: ON



6.1.2 Membership is also compulsory for the following:-

6.1.2.1 a Judge of the Constitutional Court;

6.1.2.2 a Judge of the Court of Appeal or High Court of South Africa in a permanent capacity;

6.1.2.3 a member of the National Assembly or of the National Council of Provinces;

6.1.2.4 a member of a provincial legislature in a case where the provincial legislature concerned has resolved that this Act shall apply;

6.1.2.5 any other office-bearer in the service of the Republic on recommendation of the Board and approved by the President for the purposes of the Parliamentary Act and made known by proclamation in the Gazette;

Provided that the Board may on good cause shown grant exemption from membership to any person on receipt of a written application by such person setting out the reasons for such exemption;

compulsory membership is provided for in the Parliamentary and Provincial and Medical Aid Scheme Act (No 28 of 1975), as amended.

Co-application

APPLICATION OF ACT

2. Application of Act

- (1) If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any Act expressly amending this Act, the provisions of this Act shall prevail.
- (2) This Act shall also apply to a medical scheme established by any organ of the State including those medical schemes established under section 28 (g) of the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (3) Notwithstanding the provisions of subsections (1) and (2), this Act shall not apply to the State Security Agency referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002).



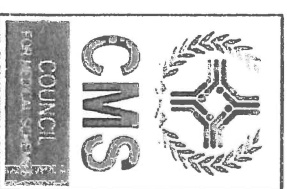
There is no conflict between the Medical Schemes Act and the Parmed Act. The two pieces of legislation govern different issues. The Medical Schemes Act 131 of 1998 aims to regulate the medical schemes industry and to increase access to private health services. The Parmed Act aims to provide for compulsory membership of the Parmed Medical Aid Scheme.



- Employment contracts: fall within the jurisdiction of the **Department of Labour**
 - Employee / Employer Relationship
 - Terms and conditions of employment
 - Labour Relations Act

- Medical Scheme Act: Council for Medical Schemes under the **Department of Health**.
 - Member / Medical Scheme relationship
 - Registered rules of medical schemes

- Parmed Act: falls within the scope of the legislature and office of the President
 - Compulsory scheme membership for office bearers



Options

How a Law is Made

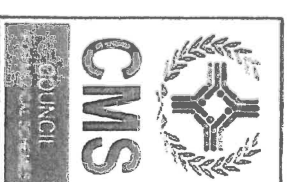
Parliament is the national legislature (law-making body) of South Africa. As such, one of its major functions is to pass new laws, to amend existing laws, and to repeal or abolish (cancel) old laws. This function is guided by the Constitution of South Africa, which governs and applies to all law and conduct within South Africa.

- Follow normal Parliamentary process to:
 - Repeal Parmed Act in its entirety; or
 - Amend Parmed Act to make it discretionary to belong to the scheme
- Both options members can join any open medical scheme of their choice or a restricted scheme of which they meet the eligibility criteria.
- Option 1: the rules alone will determine eligibility criteria

Continuation members

- The rules of each scheme must provide for:

“(n) The terms and conditions applicable to the admission of a person as a member and his or her dependants, which terms and conditions shall provide for the determination of contributions on the basis of income or the number of dependants or both the income and the number of dependants, and shall not provide for any other grounds, including age, sex, past or present state of health, of the applicant or one or more of the applicant’s dependants, the frequency of rendering of relevant health services to an applicant or one or more of the applicant’s dependants other than for the provisions as prescribed.”



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"Continuation Member", a member who retains his membership; of the Scheme in terms of rule 6.2 or a dependant who becomes a member of the Scheme in terms of rule 6.3;

Continued Membership

6.2.1 A member shall retain his membership of the Scheme when he ceases to be a current member, if -

6.2.1.1 he is entitled to a pension under the provisions of the members of Parliament and Political Office-bearers Pension Scheme Act (No 28 of 1975);

6.2.1.2 has ceased to render active service or has retired as a Judge in terms of the Judges' Remuneration and Conditions of Employment Act (No 88 of 1989);

6.2.1.3 a member who is not entitled to a pension under the said Acts or under a pensions ordinance but within thirty days after having ceased to be a current member applies for continued membership of the Scheme;

6.2.1.4 he continues to be a member of the pension scheme under the Members of Parliament and Political-Office-bearers Pension Scheme Act. and the Closed Pension Fund Act (No 197 of 1993) or the successors of such Act;

6.2.1.5 A member shall retain his membership of the Scheme with his registered dependants, if any, in the event of his retiring from the service of his employer or his employment being terminated by

his employer on account of age, ill health or disability;

6.2.2 The Scheme shall notify every member who ceases to be a current member of his right to continued membership and of the contribution payable;

- **If members move to a new scheme pensioners will move with the scheme**
- **Due to move of employer group, no waiting periods may be imposed.**

Chapter 2 Bill of Rights

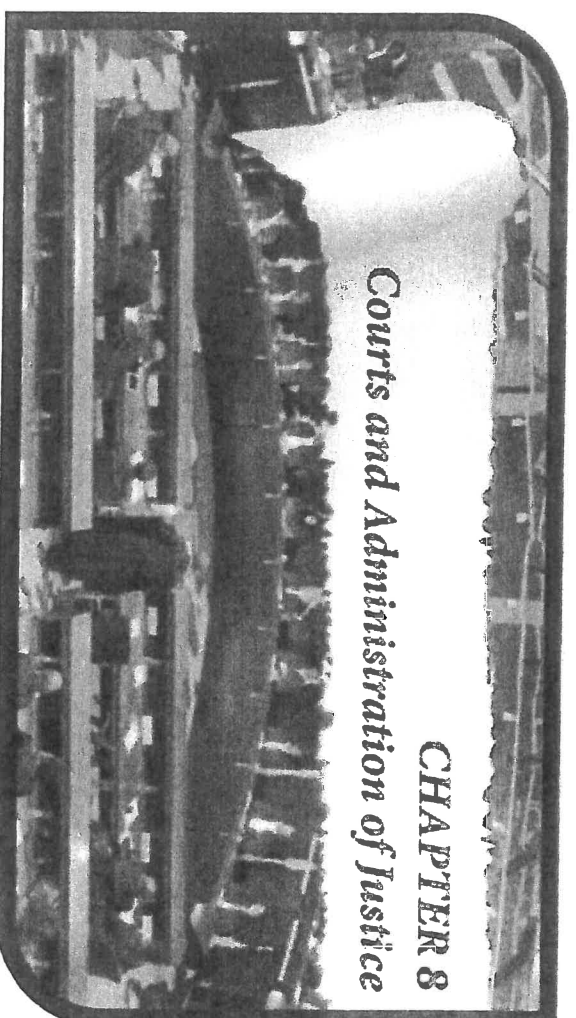
23 Labour relations

(1) Everyone has the right to fair labour practices.

“In the case of labour laws, minimum wages, government mandated benefits, and restrictions on working hours all take away the freedom of individuals to make employment decisions for themselves”

<http://www.freemarketfoundation.com/article-view/labour-laws-deny-freedom-of-choice>

Section 13(1) of the Consumer Protection Act 68 of 2008 provides a consumer with the right to choose a supplier.



(5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, the High Court of South Africa, or a court of similar status, before that order has any force.

[33] Section 172 of the Constitution deals with the powers of courts in constitutional matters. In relevant parts, it reads:

“(1) When deciding a constitutional matter within its power, a court—

- (a) must declare that any law or conductor that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and
- (b) may make any order that is just and equitable

Section 167(5) of the Constitution provides:

“The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, a High Court, or a court of a similar status, before that order has any force.”

In terms of section 172(2)(d) of the Constitution—

“[a]ny person or organ of state with a sufficient interest may appeal, or apply, directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court in terms of this subsection.”

Section 172:

“(1) When deciding a constitutional matter within its power, a court—

- (a) *must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and*
- (b) *may make any order that is just and equitable*

...

- (2) (a) The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.

- (b) A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief to a party or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.

...



- (d) Any person or organ of state with a sufficient interest may appeal or apply directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court in terms of this subsection.”

[34] Section 172(2) of the Constitution must be read with section 157(2) of the LRA in terms of which the Labour Court has jurisdiction to decide constitutional issues. Section 157(2) provides:

“The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from—

- (a) employment and labour relations;
- (b) any dispute over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and
- (c) the application of any law for the administration of which the Minister is responsible.”

NKABINDE AD CJ



Thank you

