

(d) If the prosecutor or the accused withdraws from the agreement as contemplated in paragraph (b)(ii), the trial shall start *de novo* before another presiding officer: Provided that the accused may waive his or her right to be tried before another presiding officer.

(10) Where a trial starts *de novo* as contemplated in subsection (6)(c) or (9)(d)—

(a) the agreement shall be null and void and no regard shall be had or reference made to—

- (i) any negotiations which preceded the entering into the agreement;
- (ii) the agreement; or

(iii) any record of the agreement in any proceedings relating thereto, unless the accused consents to the recording of all or certain admissions made by him or her in the agreement or during any proceedings relating thereto and any admission so recorded shall stand as proof of such admission;

(b) the prosecutor and the accused may not enter into a plea and sentence agreement in respect of a charge arising out of the same facts; and

(c) the prosecutor may proceed on any charge.

(11) (a) The National Director of Public Prosecutions, in consultation with the Minister, shall issue directives regarding all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this section and any directive so issued shall be observed in the application of this section.

(b) The directives contemplated in paragraph (a)—

(i) must prescribe the procedures to be followed in the application of this section relating to—

(aa) any offence referred to in the Schedule to the Criminal Law Amendment Act, 1997, or any other offence for which a minimum penalty is prescribed in the law creating the offence;

(bb) any offence in respect of which a court has the power or is required to conduct a specific enquiry, whether before or after convicting or sentencing the accused; and

(cc) any offence in respect of which a court has the power or is required to make a specific order upon conviction of the accused;

(ii) may prescribe the procedures to be followed in the application of this section relating to any other offence in respect of which the National Director of Public Prosecutions deems it necessary or expedient to prescribe specific procedures;

(iii) must ensure that adequate disciplinary steps shall be taken against a prosecutor who fails to comply with any directive; and

(iv) must ensure that comprehensive records and statistics relating to the implementation and application of this section are kept by the prosecuting authority.

(c) The National Director of Public Prosecutions shall submit directives issued under this subsection to Parliament before those directives take effect, and the first directives so issued, must be submitted to Parliament within four months of the commencement of this section.

(d) Any directive issued under this subsection may be amended or withdrawn in like manner.

(12) The National Director of Public Prosecutions shall at least once every year submit the records and statistics referred to in subsection (11)(b)(iv) to Parliament.

(13) In this section "sentence agreement" means an agreement contemplated in subsection (1)(a)(ii)."

Short title

3. This Act is called the Criminal Procedure Second Amendment Act, 2001.